



Social Service  
Providers  
Aotearoa

# **Submission to the Social Services and Community Select Committee on the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill**

**9 February 2022**

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## Introduction & Background

1. Social Service Providers Aotearoa (SSPA) welcomes the opportunity to submit on the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill. We are pleased to share the whakaaro of community-based social service organisations and their kaimahi who every day are working alongside children, rangatahi, families and whānau over the long-term, through the complexity of multiple, persistent challenges.
2. SSPA would welcome the opportunity to present to the Committee on our submission.
3. This submission provides SSPA's views and feedback on the:
  - a) Oversight of Oranga Tamariki System and Children and Young People's Commission Bill.
  - b) Proposals outlined in the media release dated 22 December 2021 from the Social Service and Community Committee; and
  - c) the questions for section 403 community service providers circulated by the Committee in December 2021.
4. Our written submission focuses on the significance of the Bill's kaupapa for children, rangatahi and their families and whānau, and for the community-based social service organisations working with children, rangatahi, families and whānau every day. SSPA's member organisations are section 403 and 396 community-based social service organisations around the motu. Our members will be directly impacted by the Bill in its current form, including the proposals to broaden the Ombudsman's complaints and investigations jurisdiction.
5. Our submission has been informed by feedback provided by SSPA member organisations, gathered through consultation and engagement that SSPA has facilitated (including a members' hui on 19 January 2022), and is complementary to written submissions that individual SSPA members make to the Committee, including but not limited to, Barnardos, VOYCE Whakarongo Mai and Youth Horizons Kia Puāwai.
6. In addition to our own submission on the Bill, SSPA is a signatory to the joint children's sector submission co-ordinated by the Children's Rights Alliance Aotearoa New Zealand<sup>1</sup>. SSPA therefore urges the Committee to pay attention to the recommendations outlined in the joint submission, to ensure that the Bill will provide a statutory framework that protects and upholds the rights, interests and wellbeing of all pēpē, tamariki, and rangatahi in Aotearoa, including children and young people in the Oranga Tamariki system.
7. Alongside the joint children's sector submission, SSPA encourages the Committee to pay particular attention to the submission on the Bill from VOYCE – Whakarongo Mai, given that it amplifies the matters and concerns that tamariki and rangatahi with care experience have about this Bill. Hearing and meaningfully acting on their experiences and views is essential to shaping a care and protection system that better supports the potential of all children and tamariki, the aspirations of their families and whānau, and keeps them safe from harm.

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<sup>1</sup> Available here: <https://www.childrensrightsalliance.org.nz/>

## About Social Service Providers Aotearoa

8. Social Service Providers Aotearoa (SSPA) is a membership-based national peak body, comprised of over 200 community-based social service organisations from around Aotearoa, based in both rural and urban locations<sup>2</sup>. Among our members are kaupapa Māori and Iwi organisations, Pacific providers, region-specific and national social service providers. SSPA members work across the full spectrum of community-based social services with a central focus on supporting the positive outcomes of children, rangatahi, families and whānau.
9. SSPA full members are funded by government to deliver social services in our communities every day, with a predominant focus on children, rangatahi, families and whānau (the majority of member organisations are s.396 and/or s.403 providers). Our affiliate members are organisations that deliver social services for these people, and organisations and individuals who work in areas aligned to the interests of children, rangatahi, whānau or communities.
10. SSPA's vision is that Aotearoa's NGO social services are sustainable, able to make a positive impact every day in our communities, supporting children, rangatahi and whānau to thrive now and into the future. SSPA works to strengthen Aotearoa's social sector through advocacy and engagement, learning and development, relationships and sector leadership.

## SSPA's position on this kaupapa

11. SSPA advocates for the Bill to be child-focused, to ensure that its provisions will serve children and rangatahi and their rights and wellbeing to the best extent possible.
12. SSPA believes that we have a collective opportunity in Aotearoa New Zealand right now to make systemic shifts regarding advocacy, monitoring, complaints and investigations that result in tangible, positive differences in the lives of children, rangatahi, families and whānau, especially those in the care and protection system.
13. SSPA is ready to support and contribute to these shifts, to see thriving families and whānau, ultimately decrease the numbers of children and rangatahi requiring statutory intervention, and when required, the care and support systems working to ensure children and rangatahi are always treated as the taonga that they are – first and foremost, the taonga of their families and whānau.
14. SSPA stands together with the other children's sector signatories to the joint children's sector submission coordinated by the Children's Rights Alliance Aotearoa New Zealand. The joint submission makes clear that together with others, we do not support the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill in its current form. The joint submission recommends that:

*i. Progress on the Bill be paused to allow the distinct issues related to*

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<sup>2</sup> Find out more about SSPA at [www.sspa.org.nz](http://www.sspa.org.nz) Our strategic plan 2021-23 can be found at [https://www.sspa.org.nz/images/SSPA\\_Strategic\\_Plan\\_2021-23\\_Final\\_version\\_for\\_web.pdf](https://www.sspa.org.nz/images/SSPA_Strategic_Plan_2021-23_Final_version_for_web.pdf)

*monitoring of Oranga Tamariki and the structure and function of the Children's Commission/er to each be more thoroughly considered.*

*ii. Part 5 of the Bill does not proceed until:*

- a. work is undertaken on the purpose, structure, powers, operation and resourcing of the Office to ensure any changes maintain and strengthen the Commission/er's mana and effectiveness for all children in Aotearoa;*
- b. the views and suggestions of tamariki and rangatahi about the structure and functions of their Commission/er have been sought and considered, including the views of children, young people and young adults who are, or have been, in the care and protection system about the proposed change to include them within the Commission/er's mandate.*

*iii. Parts 2, 3 and 4 of the Bill do not proceed further until:*

- a. the Bill is amended to ensure that monitoring of the Oranga Tamariki system will be independent;*
- b. the views and ideas of tamariki and rangatahi about monitoring, complaints, and advocacy to improve the care and protection system have been sought and considered, including the views of tamariki and rangatahi Māori and disabled children and young people;*
- c. the Bill includes greater, and ongoing, opportunity for input on the changes from children and young people, whānau, iwi Māori, and communities; and*
- d. the recommendations of the Abuse in Care Royal Commission of Inquiry have been taken into account, particularly the recommendations in the Royal Commission's 2021 report He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui.*

15. Alongside the recommendations in the joint children's sector submission, SSPA wishes to amplify the voices of tamariki and rangatahi who are represented in VOYCE – Whakarongo Mai's submission, which also calls for the progress of this Bill to be paused, stating:

- a. The legislative amendments proposed by the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (2021) have significant implications for the tamariki and rangatahi that VOYCE represents who have lived experience of what it is to be 'in the system'.*
- b. Efficiency of the system is being prioritised ahead of the needs, interests and wellbeing of the tamariki, rangatahi and whānau likely to be most affected by these changes. We urge the Select Committee to not progress this Bill any further until taking our recommendations into account.*
- c. The key areas of concern that we highlight in this submission are:*
  - 1. Tamariki and Rangatahi are not at the heart of this Bill*
  - 2. Flawed separation of advocacy from monitoring and complaints*
  - 3. No independence of the Independent Children's Monitor*
  - 4. Token partnership approach to governance*
  - 5. Limited powers of entry*

## Grounding the Bill in Te Tiriti o Waitangi

16. As currently drafted, the Bill proposes the establishment of a Māori Advisory Group by the independent Monitor (Clause 17). Read together with Clauses 18 and 19, SSPA agrees with the joint children's sector submission and VOYCE – Whakarongo Mai's assessments that the Bill is not strongly enough grounded in Te Tiriti o Waitangi, and that it does not adequately provide for partnership with Māori. Both submissions reinforce that the Bill risks perpetuating the same mistakes that have already been made by the Crown in relation to the care and protection system.
17. SSPA's view is that the Bill needs to meaningfully embed Te Tiriti o Waitangi at the heart of this legislation, and ensure Treaty principles are integrated to provide the framework for effective care and protection and equitable outcomes for children and rangatahi - including in their most vulnerable states.
18. The Waitangi Tribunal has articulated a number of Treaty principles that SSPA believes should be embedded in the Bill – these have been most recently discussed by the Tribunal in *Waitangi Tribunal Report on Wai 2575*<sup>3</sup> and in *Oranga Tamariki Urgent Inquiry WAI 2915*<sup>4</sup>. They are the principles of: partnership; active protection; equity; and options. It is important to ensure that any legislation focusing on children in Aotearoa is grounded in Te Tiriti and these principles, to ensure children, rangatahi and their whānau are served in the best possible way by the care and protection system.
19. We also look to the findings and recommendations of the report of the Oranga Tamariki Ministerial Advisory Board *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa*<sup>5</sup> and ask: does this Bill in its current form apply a lens of Te Au o Te Kānohi Māori and embed Te Tiriti to achieve sustainable change? As articulated within the report *Te Kahu Aroha*:  
  
*'responsibilities and structures must be rebuilt so that the whānau can once again be self-determining. To achieve sustainable change, then Māori must be given the resources to strengthen the foundations of their communities, the papakāinga once again busy and thriving with Māori and community organisations supporting whānau and tamariki nestled securely within – as we believe Te Tiriti promised*<sup>6</sup>.
20. We emphasise that direct engagement with whānau Māori and with Iwi and hapū should form a central part of the Bill to ensure Te Tiriti o Waitangi and Te Au o Te Kānohi Māori are both able to ground and frame the Bill. Taking such an approach will serve all children, rangatahi and whānau well. *Te Kahu Aroha* calls for collaborative partnership which is echoed in the *Oranga Tamariki Future Direction Action Plan*<sup>7</sup>, yet the Bill in its current form does not reflect this change in trajectory

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<sup>3</sup> Wai 2575, Waitangi Tribunal Report 2019, Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_152801817/Hauora%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_152801817/Hauora%20W.pdf)

<sup>4</sup> He Pāharakeke, he Rito Whakakīkinga Whāruarua Oranga Tamariki Urgent Inquiry WAI 2915 [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_171027305/He%20Paharakeke%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_171027305/He%20Paharakeke%20W.pdf)

<sup>5</sup> Report of the Oranga Tamariki Ministerial Advisory Board *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa* <https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF>

<sup>6</sup> Pg 16 of Report of the Oranga Tamariki Ministerial Advisory Board *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa* <https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF>

<sup>7</sup> Oranga Tamariki Future Direction Action Plan September 2021 <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/News/2021/MAB-report-action-plan-release/OT-Future-Direction-Action-Plan.pdf>

for the care and protection system to meet the needs of tamariki Māori and whānau. *Te Kahu Aroha* calls for:

*'collaborative partnership between all who have a role in supporting tamariki and whānau will take us much further and a lot faster than working in isolation. Partnership is the only real option to meet the vision of safe, loved, and nurtured tamariki and whānau'*<sup>8</sup>.

When it comes to legislatively based systems of governance in relation to kaupapa such as the rights and wellbeing of children and rangatahi in the care and protection system, SSPA suggests that these should be based on a Te Tiriti o Waitangi collaborative and collective co-governance model. We do not think that the Māori Advisory Group model is consistent with this approach.

### **Consistency with New Zealand's international law obligations, recommendations of the Abuse in Care Royal Commission of Inquiry, and the Child and Youth Wellbeing Strategy**

21. The Bill must be consistent with Aotearoa's obligations under international human rights law and standards, as well as consistent with domestic human rights law. In particular, from an international law perspective, it is essential that the Bill reflects and is grounded in:
  - a. the United Nations Convention on the Rights of the Child (CRC)
  - b. the United Nations Convention on the Rights of Persons with Disabilities (CRPD)
  - c. the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
22. The joint children's sector submission coordinated by the Children's Rights Alliance Aotearoa New Zealand is guided by Aotearoa's commitments and duties as a States Party to the CRC. Within this context, the joint submission highlights the need for respect for children's participation rights to be embedded in this Bill. SSPA agrees that taking the views of all children - including tamariki and rangatahi Māori and children with disabilities into account is essential, to ensure this Bill will serve the outcomes of children and rangatahi well.
23. For the aspects of the Bill relating to the Oranga Tamariki system, this is very important too, given certain groups of children, such as tamariki and rangatahi Māori, Pasifika and children with disabilities are disproportionately represented within the care and protection system. To work towards decreasing the numbers of tamariki requiring statutory intervention, we need to hear from children and rangatahi directly regarding their experiences and views. These are essential for us to listen to and meaningfully act on, in order to create a better care and protection system in which they are connected, respected, nurtured and empowered, with all of their rights adequately protected and respected at all times.
24. SSPA urges that Parts 2,3 and 4 of the Bill do not proceed until the recommendations of the Abuse in Care Royal Commission of Inquiry 2021 report, *He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānu*<sup>9</sup>, are taken into account.

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<sup>8</sup> Pg 12 of Report of the Oranga Tamariki Ministerial Advisory Board Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa <https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF>

<sup>9</sup> Abuse in Care Royal Commission of Inquiry, *He Purapura Ora, he Māra Tipu. From Redress to Puretumu Torowhānu* [https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol\\_1\\_Web.pdf](https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol_1_Web.pdf)

25. The Report raises many points in its description of the puretumu torowhānui system that impact directly on this Bill in regard to monitoring functions, a trauma-informed approach to interactions with survivors of abuse and for those making complaints, providing feedback or sharing disclosures of abuse and neglect. The Bill in its current form risks being misaligned with the Royal Commission of Inquiry's recommendations, which comprehensively establishes a process forward for children, rangatahi, families and whānau to seek redress. The scheme outlined in the Report is based on a partnership model grounded in tikanga Māori principles, and details how support services would work and how interactions with the scheme by children, rangatahi, families and whānau and the kaimahi tasked with response would operate in practice. This all directly impacts the care and protection system and significant aspects of this Bill's kaupapa. SSPA believes it would make sense, therefore, for the Bill to be reconsidered in light of these pivotal recommendations.
26. Both the joint children's sector submission and VOYCE – Whakarongo Mai's submission draw attention to the inconsistency that exists between the Bill and the Child and Youth Wellbeing Strategy, and specifically the Strategy outcome area that children and young people "are involved and empowered."<sup>10</sup> We urge the Committee to pay particular attention to these submissions which call for the inclusion of the perspectives of tamariki and rangatahi most affected by the changes proposed within the Bill.

## **Whakaaro of Community-based Social Service Providers**

27. As a signatory to the joint children's sector submission, SSPA stands with all the signatories from across the children's sector in amplifying the messages it shares. The following sections of our SSPA submission further bring forward the whakaaro of our member organisations, which are community-based social service providers working in the child protection and whānau wellbeing spaces throughout Aotearoa. The children, rangatahi, families and whānau who our member organisations serve every day will be directly impacted by this Bill, as will our member organisations themselves in the course of their day-to-day mahi.
28. There are fundamental distinct changes outlined within the Bill regarding monitoring, reporting and the complaints process, along with the structure and function of the Children's Commission/er and advocacy for children and rangatahi issues. SSPA urges the Committee to deeply interrogate how this Bill will be operationalised. We encourage the Committee to do so through consultation with the children's and social service sector. SSPA is of the view that there has been insufficient consultation to-date. The timing of the consultation period over the Christmas/Summer holiday period has meant that community-based social service organisations have not been able to fully consider the implications of this Bill, and the proposals of the Committee regarding s.403 providers.
29. Among the views our members have shared with SSPA, there is strong consensus that the Bill creates an overly complex system, with a focus on compliance rather than what is in the best interests and consistent with the rights of children and rangatahi. There is concern amongst SSPA members about how the Bill will impact on the ability of community-based social service organisations and kaimahi to

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<sup>10</sup> Pg 17 of The Child and Youth Wellbeing Strategy

<https://childyouthwellbeing.govt.nz/sites/default/files/2019-08/child-youth-wellbeing-strategy-2019.pdf>

continue to be as effective as possible with their work supporting children, rangatahi, whānau and family.

### **The proposed Children and Young People's Commission**

30. The joint children's sector submission has given thorough consideration to Part 5 of the Bill and the structure and function of the Children's Commission/er. It strongly recommends:

*Part 5 of the Bill does not proceed until:*

- a. *work is undertaken on the purpose, structure, powers, operation and resourcing of the Office to ensure any changes maintain and strengthen the Commission/er's mana and effectiveness for all children in Aotearoa;*
- b. *the views and suggestions of tamariki and rangatahi about the structure and functions of their Commission/er have been sought and considered, including the views of children, young people and young adults who are, or have been, in the care and protection system about the proposed change to include them within the Commission/er's mandate.*

31. SSPA agrees with these recommendations and the further statement in the joint submission that:

*the Bill could be an opportunity to strengthen the Children's Commissioner's Office so that it continues to be an effective, authoritative and independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives.*

32. SSPA members are questioning why the changes to the Children's Commissioner presented in the Bill are being made, with many of our members expressing that they do not understand or see good reasons for these changes being required.

33. Many SSPA members have strongly expressed that they want to see the named role of Children's Commissioner continue – and that this role must be able to independently champion the rights and outcomes of all children and tamariki in Aotearoa.

34. In addition, SSPA members have strongly expressed the need to ensure that the system of oversight of Oranga Tamariki and children's issues is not overly complex (as presented in the Bill). Instead, our members are advocating for a clear, accessible and child and rangatahi-centred system, where children's rights are championed, whānau are at the heart of approaches, and children's complaints are dealt with in a child's sense of time (i.e. as immediately as possible), by people with the specialist capability to do so effectively, with a focus on preventing and/or addressing harm. The joint children's sector submission expands on the following areas that SSPA wishes strongly recommends the Committee consider in relation to the Bill:

- a. *Keeping the Children's Commissioner* (rangatahi views shared in VOYCE-Whakarongo Mai's submission also support this).
- b. *Oversight and advocacy – keeping more of the Commissioner's functions. Children do not live their lives in siloes, but across many systems and they need avenues for raising issues or concerns no matter which system those issues or concerns relate to.*

- c. *The need to maintain consistency with UN recommendations.*
- d. *The Commissioner's functions regarding complaints and investigations should be retained.*
- e. *The Commissioner's powers to report to the Prime Minister on matters affecting the rights of children should be retained.*
- f. *Board versus Commissioner sole model of which there are merits to both models, however there should still be a named Children's Commissioner.*

## Monitoring of the Oranga Tamariki system

*"Compared with other developed nations, Aotearoa New Zealand has among the poorest child wellbeing outcomes and some of the highest rates of harm to tamariki and rangatahi. The challenge and opportunity is to once again make tamariki the centre of our villages, kāinga, communities and society with all eyes watching out for them, ensuring that they are safe and that they are nurtured, cared for and loved."<sup>11</sup>*

*- Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa report*

35. SSPA supports the following recommendations made in the joint children's sector submission, regarding oversight of the Oranga Tamariki system:

*Parts 2, 3 and 4 of the Bill do not proceed further until:*

- a. *the Bill is amended to ensure that monitoring of the Oranga Tamariki system will be independent;*
- b. *the views and ideas of tamariki and rangatahi about monitoring, complaints, and advocacy to improve the care and protection system have been sought and considered, including the views of tamariki and rangatahi Māori and disabled children and young people;*
- c. *the Bill includes greater, and ongoing, opportunity for input on the changes from children and young people, whānau, iwi Māori, and communities; and*
- d. *the recommendations of the Abuse in Care Royal Commission of Inquiry have been taken into account, particularly the recommendations in the Royal Commission's 2021 report He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui.*

36. SSPA further draws the Committee's attention to the recommendations of the Abuse in Care Royal Commission of Inquiry 2021 report, *He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui*. In particular, we note that the Royal Commission of Inquiry states that the Crown should ensure that any monitoring body or monitoring activities relating to children, young people and adults at risk in care:

- a. *nurtures the trust of children, young people and adults at risk*
- b. *is consistent with the Crown's te Tiriti o Waitangi obligations*
- c. *is organised to reflect the Māori-Crown relationship*
- d. *is independent of other oversight mechanisms and the organisation(s) being monitored*
- e. *complies with all relevant human rights obligations*

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<sup>11</sup> Pg 17 of Report of the Oranga Tamariki Ministerial Advisory Board Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa <https://www.beehive.govt.nz/sites/default/files/2021-09/SWRB082-OT-Report-FA-ENG-WEB.PDF>

- f. operates regularly, or is conducted regularly, using staff with appropriate skills and expertise.*<sup>12</sup>

37. SSPA believes the recommendations of the Royal Commission are directly relevant to the kaupapa of the Bill. We observe that the framework contained within the Bill does not align as well as it could with these recommendations. An opportunity therefore exists to pause progress of the Bill while these recommendations can be taken into consideration, and the Bill re-worked to better reflect the approach outlined by the Royal Commission.

38. SSPA is concerned that the proposed changes will create an overly-complicated oversight framework, which does not keep children and rangatahi – and their rights and best interests – at the absolute centre. It is essential to have monitoring of Oranga Tamariki to ensure all children and young people in the State's care and protection system receive quality care, protection and youth justice services. However, we have concerns regarding the model the Bill suggests. The joint children's sector submission expands on these concerns, and SSPA urges the Committee's attention to focus on these key points within the joint submission:

- a. The Bill undermines the Children's Commissioner's role in oversight of Oranga Tamariki*
- b. Monitoring must be independent*
- c. Confusion, gaps and overlaps about the boundaries and overlaps between the different oversight agencies and their roles [exists within the Bill], meaning the Ombudsman, the Commission/er and the Monitor.*
- d. Link between oversight and systems improvement in practice is unclear [in the Bill].*

Further detail regarding these points is outlined in the joint children's sector submission, which we encourage the Committee to give close attention to.

39. SSPA emphasises the following, which we believe to be a concerning and significant omission within the Bill regarding monitoring. During the course of the Monitor's work preparing annual reporting on compliance, it is unclear what is expected to happen when an issue – e.g., a disclosure of harm that may be ongoing for a child – is discovered that requires immediate action to keep a child safe and prevent further harm. The Bill is silent on this, and which organisation (within the system of oversight envisaged by the Bill) will pick up the disclosure of harm and act upon it, so that immediate steps are taken to keep the child or rangatahi safe.

40. SSPA is of the view that the first and foremost focus of the Bill in relation to the system of oversight must be on keeping children and rangatahi safe from harm, upholding their rights and protecting their wellbeing. Therefore, we think that the complaints and investigations roles within the system of oversight need to be aligned, so that there are no gaps for children, rangatahi, families and whānau to fall through. There is the very real danger that with the monitoring, complaints and advocacy functions split across different organisations (ICM, Ombudsman, Commission) as currently envisaged by the Bill, the effectiveness of each of these parts of the model will be hindered in their ability to integrate relevant information, and act upon concerns shared by or about children and/or rangatahi in an effective and timely

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<sup>12</sup> Pg 347 of Abuse in Care Royal Commission of Inquiry He Purapura Ora, he Māra Tipu. From Redress to Puretumu Torowhānui [https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol\\_1\\_Web.pdf](https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol_1_Web.pdf)

manner. SSPA strongly urges that this aspect of the Bill needs to be re-considered and addressed, placing the rights and safety of children and rangatahi central.

## Complaints oversight by the Ombudsman

41. Both the joint children's sector and VOYCE – Whakarongo Mai submissions draw attention to the impact of the expanded role of the Ombudsman under the Bill, highlighting the need to ensure any complaints system is child-friendly. This means processes that are accessible and making it easy for children, rangatahi, whānau and families to make complaints and raise concerns about their lives. It also means that these must be able to be addressed effectively in ways that work for the individual child or young person, and in a timely manner, within a child's sense of time (i.e. as immediately as possible, without delay). VOYCE – Whakarongo Mai calls for thorough consultation with those who are in state care and/or have lived experience of the care system, to help to appropriately shape the complaints system and how it can best work for them and other children and rangatahi. SSPA supports this call.
42. SSPA and many of our members (like many other community-based submitters) question whether the Ombudsman's office has the specialist capability, expertise and capacity to operate in child, rangatahi, and whānau friendly ways. The Abuse in Care Royal Commission of Inquiry 2021 report *He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui* has thoughtfully expressed what is required to ensure interactions take a trauma-informed approach, and what is needed to ensure there are appropriate services available, legal advice, the role of providing help making a claim, and incorporating a te ao Māori perspective for survivors.<sup>13</sup>
43. This thinking from the Royal Commission can be helpfully extended to thinking about how a system of complaints for children and rangatahi can work effectively for them. Each child and rangatahi in state care has incredible strengths and potential. However, it is unfortunately the reality that children and rangatahi can face heightened vulnerabilities within the care and protection system. Therefore, it is essential that appropriate mechanisms are in place to ensure effective services for children and rangatahi from the Ombudsman and its staff, if this aspect of the Bill is to proceed.
44. SSPA also notes that the Bill does not contain a definition of 'complaint', nor what would constitute a level of complaint that requires the involvement of the Ombudsman. This needs to be clear for children, rangatahi, families and whānau accessing the complaints service, and for organisations in the complaints oversight system – such as community-based social service providers. Currently the National Care Standards has material for children and rangatahi in care on raising complaints or sharing feedback. However under the new system of oversight proposed by the Bill, we query how children, rangatahi and whānau will know what they can complain about, how they can make complaints, and how their complaint will be dealt with. It is essential that children, rangatahi and whānau feel they can trust and easily understand the complaints process, otherwise they will be unlikely to use it.

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<sup>13</sup> Pg 287, 289 of Abuse in Care Royal Commission of Inquiry He Purapura Ora, he Māra Tipu. From Redress to Puretumu Torowhānui [https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol\\_1\\_Web.pdf](https://www.abuseincare.org.nz/assets/Uploads/Documents/He-Purapura-Ora-he-Mara-Tipu-Vol_1_Web.pdf)

## **The Social Services and Community Select Committee's proposals to broaden the Ombudsman complaints and investigations jurisdiction<sup>14</sup>**

45. The expansion of the Ombudsman's jurisdiction to cover s.396 providers and the Committee's proposal to broaden the Ombudsman's jurisdiction to include section 403 providers are aspects of the Bill that SSPA has given consideration to. This proposal will have implications for SSPA's members and potentially the families and whānau who they serve every day.
46. SSPA believes that the Bill as it is currently drafted will add increasing complexity to current practices and result in work practices operating in silos. From what SSPA understands about this aspect of the Bill, Clause 41 requires s.396 providers, along with the possible addition of s.403 providers, to report directly to the Ombudsman about the matters mentioned in the Bill, rather than Oranga Tamariki as the commissioning agency. It is also our understanding that under the Bill, the responsibility to manage any further enquiries or investigations will move to sit with the Ombudsman, rather than these being managed by Oranga Tamariki in conjunction with the contracted social service provider.
47. The Ombudsman will be able to require information from care and custody providers and community service providers, and because of the nature of the information the Ombudsman can require, this will have implications for social service provider organisations, and potentially the people they serve.
48. Based on current drafting of the Bill, the information the Ombudsman can require from social service providers is broad, and it can be required within a certain timeframe. Organisations will need to think about the practical support that will be needed to fulfil these new requirements if they are to proceed. This includes, for example, capability and resource regarding privacy law compliance, legal assistance that may be required, data collation which will take up valuable staff time, as well as potential financial ramifications.
49. SSPA envisages that a code of ethics (or similar kind of guidance) will need to be developed, if this aspect of the Bill is to proceed. We advocate for focus to be kept on the overall outcome being sought, which should be, in our view, the effective and timely resolution of child and rangatahi complaints, and for trends concerning harm in care to be understood and addressed with children's rights and best interests held central, and to prevent future harm. There will need to be co-designed processes in place to support organisations' interactions with the Ombudsman, and feedback loops to ensure complaints have been dealt with appropriately, and to ensure that relevant information is shared between the parts of the system. It will be important for the Ombudsman to work transparently with providers on expectations around the amount of information and data that needs to be shared, and organisations will need to be resourced to be able to collate such information and data.

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<sup>14</sup> <https://www.parliament.nz/en/pb/sc/committees-press-releases/have-your-say-on-the-ombudsman-investigating-complaints-about-people-or-organisations-providing-services-to-children-and-young-people-in-the-oranga-tamariki-system/>

## **The questions for section 403 community service providers circulated in December 2021**

48. We have asked SSPA members if they can provide answers to these questions and quantify the implications of the proposed changes. Given the complexities of the Bill regarding changes to complaints, reporting and monitoring, they did not feel detailed answers on how this will work in practice could be provided at this point in time.

49. The timing of the release of these question over the Christmas/summer holiday period has also been awkward – where possible, our members have been taking a well-deserved break two years deep into the pandemic, whilst for others, there has been no holiday given the ongoing demands for their services from their local communities.

50. SSPA is willing to conduct further consultation with our members to ensure the Committee understands the likely impact of the Bill's application for s.403 community service providers. It would be helpful if complaints and reporting scenarios could be developed, in order for social service providers to better understand what is envisaged for them regarding what the proposed changes would mean for them in practice.