
Social Service Providers Aotearoa
Submission to Social Services Committee

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

March 2017

3 March 2017

Submission to the Social Services Select Committee: Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill

Email: select.committees@parliament.govt.nz

SSPA wishes to speak to this submission

This submission is from:
Brenda Pilott, National Manager
Social Service Providers Aotearoa Inc. (SSPA)

Contact details:
PO Box 25515, Featherston St, Wellington
Tel: 027 430 6016
Email: manager@sspa.org.nz

## Contents

## About SSPA

Social Service Providers Aotearoa (SSPA) is the New Zealand umbrella organisation for Ministry of Social Development funded non-government providers working with children, young people, families, and communities. SSPA is an incorporated society and a registered charity.

With a membership of some 200 social service providers in 16 regions, SSPA represents an approximate collective capacity of 6500 staff and 5000 volunteers providing essential services to children, families and communities throughout New Zealand.

SSPA's membership is open to all providers approved under the Children Young Persons and their Families Act 1989:

- Providers approved under Section 396 Child & Family Support Services (providing foster care and residential services)
- Providers approved under Section 403 Community Services.

Our membership also includes other providers contracted by the Ministry of Social Development, and associated members that hold contracts with other departments such as Justice and Education, and the District Health Boards.

SSPA is governed by a National Executive Committee elected from among provider practitioner-leaders by the membership body at an annual AGM for a two-year term. The current Executive consists of regional representatives as well as representatives of Māori and Pacific providers. A National Manager, an Events and Administration Officer and a Communications officer are based in Wellington.

SSPA exists to support member service providers to make a positive and significant difference in their communities through their work with children, young people and families. SSPA runs best practice professional development for member providers through the provision of resources, facilitation of forums, regional meetings, seminars and conferences. Effectiveness and efficiency of social service practice and decision-making across the sector are also our concern.

SSPA also draws on its grass-roots membership to engage with government in the legislative and policy development process, including submissions, information and advice, and facilitating consultation.

Please note the views in this submission do not necessarily represent the views of all SSPA members.

## Introduction

Social Service Providers Aotearoa (SSPA) is generally supportive of the direction of changes to set up the new Ministry for Vulnerable Children Oranga Tamariki (MVCOT). SSPA commended the Final Report of the Modernising Child, Youth and Family Expert Panel for the systematic approach being taken to implement the reform of our system of services for vulnerable children and young people. In our submission in July 2016 regarding the first amendment Bill, we were generally supportive of the Bill and in particular strongly supported the focus on developing a more child-centred service that provided better opportunities for children and young people to have a say in the decisions that affect them.

We have some reservations about the implementation of these matters in the Amendment Bill and in particular the changes to the standing of whānau, hapū and iwi in decision-making on their children and young people, and with the information sharing arrangements set out in the Bill. These are detailed in the submission, along with other comments and recommendations.

SSPA supports the submissions made to the Select Committee by, Birthright, IHC, Platform Trust and the Public Service Association. We also note and support the submissions by the Privacy Commissioner and by the Royal Australian and New Zealand College of Psychiatrists on the information sharing aspects of the Bill.

## Executive Summary

The CYPF (Oranga Tamariki) Amendment Bill has many positive aspects that reiterate the commitment of the state to better outcomes for children and young people. SSPA welcomes those aspects of the Amendment Bill that:

- Support the creation of a more child-centred system
- Give greater priority to the voices of children and young people in decisions that relate to them
- Give a commitment to early intervention
- Extend the age of the youth justice jurisdiction to age 17
- Extend the principle of the best interests of the child into the youth justice system
- Provide for support for young people leaving care as they transition to adulthood
- Hold the Chief Executive accountable for outcomes for Māori children and young people
- Ensure children and young people with disabilities receive equitable treatment
- Provide additional support for caregivers
- Provide for a framework of National Care Standards.

We have some concerns, however, about aspects of the implementation of the legislative and institutional arrangement designed to give effect to these matters.

The concept of a “stable and loving home” (or its absence) as the basis for state intervention in the lives of families is a tenuous basis and one that will resist measurement. This term should be deleted from the Bill.

There is no clear definition of what a “vulnerable” child is.

The Purposes and Principles sections contain a lengthy set of matters which have the potential to add unnecessary complexity to the decision-making of social workers, especially as there is no weighting or priority given.

We share the concerns of other agencies about the changes being proposed to the standing of whānau, hapū and iwi in the decisions relating to their children. While we commend the intention to focus on better outcomes for Māori children and young people, we believe the Bill should retain the emphasis on the importance of family, whānau and kin in their lives. We support the safety and well-being of children being the paramount consideration, but do not believe this is enhanced by viewing children outside the context of their families and their culture. The 1989 Act aimed to empower families, kin groups and the wider community to look after their own children and SSPA believes this is still the best principle on which to base a child protection system.

We recommend a clear hierarchy of options coming to the attention of the Ministry: first, stronger focus on resources and support being given for family preservation, and for whānau placement as the next available option, with care placement outside the kin network the last option. The phrase "at the earliest opportunity" appears to place the emphasis on quick permanent placement and this seems likely to lead to risk-averse practice and to a growth of the number of children and young people in permanent non-kin care.

We do not support the information sharing arrangement proposed and agree with the recommendation of the Privacy Commissioner to retain the current arrangements, or if this is not agreed, to limit the information sharing to that which is required for risk assessment purposes. The current legislation already places a duty to report and share information about children and young people at risk of harm or abuse. In addition to introducing unnecessary complexity, we are concerned with issues about consent by service users, and the compromise of professional duty of care and confidentiality. Privacy issues are especially important in view of the net-widening nature of state intervention enabled by this Bill.

The changes being proposed are ambitious and very large scale. Previous changes to the child protection and youth justice systems have failed, in part because of under-resourcing and under-estimation of the extent of change management required. We must not make the same mistake this time. The change management and resourcing extends to the NGO provider sector, where a greater level of involvement is envisaged and must be resourced.

Other key points in our submission include:

- Recommendation to strengthen the accountability for achieving outcomes for Māori children and young people by establishing an independent Māori monitoring entity
- Removing the National Care Standards from regulation so that they can be more readily amended if required
- Extending the right to legal representation for young people beyond intention-to-charge family group conferences (FGCs) and ensuring legal representation in other situations
- More community-based options as an alternative to remand in custody. We support the Commissioner for Children's call to remove the legislation that enables young people to be held in Police cells.

## Summary of Recommendations

| | Recommendation | Clause | Section in CYPF Act |
|---|---|---|---|
| 1 | The new operating model will deliver a significant amount of the change being sought, in addition to changes contained in the Bill. We recommend a review at the completion of the operating model implementation to ensure the operating model remains aligned to the intentions of the legislation. | | |
| 2 | In order to realise genuine and sustained change, the implementation of the new Act requires sufficient resourcing including workforce capability development, additional resourcing for community providers and organisational change management. To date provider resourcing has not been factored into the costs of implementation. | | |
| 3 | Remove the term 'safe, stable and loving home' from the Purpose and Principles. | 6<br>8 | 4<br>5 |
| 4 | Revise the Purpose statement to retain the current emphasis on the importance of family, whānau and kin in the lives of children and young people | 6 | 4 |
| 5 | Provide a stronger focus in the Purposes and Principles on the duty to prioritise family preservation wherever possible, recognising both the primacy of child safety and wellbeing and the rights of children to maintain connection with their family, whānau and with their cultural identity. | 6<br>8 | 4<br>5(a) to (g) |
| 6 | Add a definition of "vulnerable child or young person" to the Bill. | 4 | 2 |
| 7 | Include reference to the Treaty of Waitangi in the Principles, to ensure consistency with the new section 7A stating the duties of the CE in relation to Māori outcomes. | 8 | 5(a)(i) |
| 8 | Provide for an external independent Māori monitoring body to be set up to report on the Ministry's performance in delivering outcomes for Māori children and young people. | 12 | 7A(3) |
| 9 | MVCOT to prioritise building staff capability to work effectively to deliver outcomes for Māori. | | |
| 10 | Amend Purposes (4(a) or 4(b) ) to include family material circumstances as a significant contributor to child and young person well-being. | 6 | 4 |
| 11 | Ensure adequate resourcing of NGO providers to enable effective delivery of services to meet the outcomes of the CYPF Act | | |

| | Recommendation | Clause | Section in CYPF Act |
|---|---|---|---|
| 12 | A public education programme will be needed to develop community support for and understanding of the new approach to intervention in families, which is beyond the current scope of families where there is a child or young person at risk of harm. | | |
| 1 | Remove the National Care Standards from regulation. | 119 | 447(fa)(i) – (v) |
| 14 | The Bill should extend the legal protections available to young people by providing the right to mandatory legal representation in situations such as arrest, Police interview, child offender family group conferences (FGCs). This should not be limited, as proposed in the Bill, to intention to charge FGCs. | 97 | New section 248A |
| 15 | The ability to detain young people in Police custody be removed from legislation. | | |
| 16 | Additional community-based options be funded and supported as an alternative to remand in custody. | | |
| 17 | Not proceed with the information sharing arrangements described in clause 38 but seek further work, including the Privacy Commissioner and in consultation with other relevant agencies, to develop an enabling approach to information sharing primarily for the purposes of risk assessment. | 38 | 66 |
| 18 | The Select Committee seek further assurances that all issues about the interface between the Bill and the Privacy Act are resolved and that all privacy considerations have been met. | 38 | 66 |
| 19 | The Select Committee to note the current Inquiry by the Privacy Commissioner into the proposed requirement that NGOs collect and supply to MSD identifiable client information as a condition of contract. It is our view that this is at odds with the information sharing approach in the Bill. | | |
| 20 | Consideration be given to financial assistance for NGOs to meet the additional compliance costs generated by the proposed information sharing practices. | 38 | 66 |
| 21 | Decision makers be required to document when and why the child or young person has not participated. This is consistent with the intent of section 5A(1)(b). | 8 | 5A(1)(a) |
| 22 | Designate the Office of the Commissioner for Children as the agency to monitor care standards. | 120 | 447A |
| 22 | Delete reference to determining the return on investment. This is appropriately delivered as policy advice, not directed in legislation. | 11 | (7(2)(b)(bab)(ii) |

## General Comments

### 1. A child-centred system

1.1 As noted above, SSPA supports the intention to create a more child-centred system and in general supports the proposed approach to establish this through legislation. We have a number of comments and recommendations aimed at improving the legislation and making it more workable.

"Safe, stable and loving homes"

1.2 The proposed Purpose and Principles (Clause 6 amending section 5 Principles and section 13(2) ) include reference to children and young people having a "safe, stable and loving home". Ideally this will be the case for all children but it is unusual and not desirable for such language to be imported into legislation, rather than being a broad policy objective. There seems no possibility of such an aspirational and subjective concept as a 'loving home' being measured or being able to be used as part of an assessment for state intervention.

1.3 The concept of 'safety' is straightforward and relates well to children being safe from harm. However, 'stable' and 'loving' and their absence do not provide the basis for the exercise of MVCOT statutory powers. A child in a family where the parents are separating may find their home unstable, notwithstanding the best efforts of their parents. A teenager subject to close parental control in their interests may not find theirs to be a loving home at that time. In neither case does the state need to intervene unless there is risk of harm.

1.4 We suggest this language be dropped from the Bill, given the purpose of this legislation is to provide the basis for state intervention in the lives of families. We support the retention in the Bill of the 1989 Act's central concept that the wellbeing of the child or young person must be paramount. This seems a more reliable overarching concept than "safe, stable and loving homes".

"Vulnerable" and assessment of vulnerability

1.5 The Bill (and the 1989 Act) contains a definition of a child or young person in need of care and protection. However, neither this Bill nor the Vulnerable Children Act 2014 defines what a "vulnerable" child is. For the purposes of this Bill, the assessment of vulnerability unlocks access to services, including those that will be directly purchased. This assessment will take place across a number of agencies and in many individual cases. Without clear and sufficient definition, there is a high risk of uneven assessment practice and therefore differential service access.

1.6 We recommend a definition of "vulnerable child or young person" be added to the Bill.

Voice of children and young people

1.7 One of the key mechanisms for increasing the focus on the child or young person is the change proposed to the Principles of the 1989 Act, which states that the wellbeing of the child or young person is the paramount consideration. Arguably, this should have delivered a child-centred system, but for a range of reasons has not, including the lack of effective ways for the voice of the child or young person in decisions relating to them. SSPA supports the amendments embedding children and young people's voices in the new system.

1.8 SSPA supports the new emphasis on maintaining sibling connections as an important factor.

1.9 We note Clause 9 (creating a new section 5A Principles of Participation) proposes section 5 A(1)(a) include the term "as far as is practicable" with regard to obtaining the views of children and young people in decisions pertaining to them. This limiting phrase must not be used as a barrier to participation. We recommend an amendment to Clause 9 so that section 5A(1)(a) includes the need for decision makers to document when and why the child or young person has not participated. This is consistent with the intent of section 5A(1)(b). We also encourage the development of professional guidance to ensure this principle is given fullest possible effect.

Family material needs

1.10 We note that the material needs of families are obliquely referred to in the new Purpose statement - only to the extent that families (or 'usual caregivers') are able to meet the needs of their children, and that homes are 'safe' and 'stable'. Material conditions such as adequate family income, and adequate warm dry housing contribute significantly to the safety and stability of family and provide a basis for meeting emotional and other social needs of children suffering adversity impacting their life outcomes. While it is beyond the scope of this Bill to give effect to these matters, we note that children's long-term educational, health and economic needs are referenced, and we recommend amending clause 6 to include family material circumstances as a significant contributor to child and young person well-being in section 4 Purposes, either by expanding section 4(a) or 4(b).

Large scale change

1.11 The proposed legislative amendments set in place a new model of child protection social work practice at the same time as aiming at effecting large-scale behavioural change in the community. This is ambitious and very large-scale change. The work of CYF social workers is already highly complex and the new legislation seems likely to increase that complexity, with social workers having to make professional judgements including risk of future harm taking into account the new Act's extended purposes, principles and duties. A likely outcome is practice increasingly centred on risk avoidance which will, amongst other things, lead to an increase in the number of children in care. Such practice will not deliver the aspirations of the Bill and it will require concerted and sustained support to strengthen more positive practice models.

1.12 Important aspects of the child-centred system will also be delivered through the new operating system which has a multi-year establishment path. A review at the completion of the operating model may be necessary to ensure the operating model remains aligned to the intentions of the legislation.

Resourcing the changes

1.13 The Regulatory Impact Statement (RIS) *Investing in Children: Foundations for a Child-Centred System* states that "the proposals in this paper do not have significant fiscal impacts" (para 112, p27 refers). This is a concerning claim, given the magnitude of change being proposed, the need for significant workforce capability development, additional resourcing for community providers, the extent of organisational change management likely to be required, and the prospect of increased numbers of children in care.

1.14 The work of adapting established practice models should not be underestimated, nor the resources required to effect such change. Previous changes to Child, Youth and Family have not been successful in part because the changes were not adequately resourced. We should not repeat that mistake this time.

1.15 Given the increased role that community providers will play, consideration must be given to ensuring there is adequate resourcing to enable providers to deliver on the outcomes sought, in partnership with the new Ministry and recognising that the long-term underfundng of the sector.

## 2. Improving outcomes for Māori children and young people

Purpose Statement

2.1 The proposed new Purpose Statement, revising the current Act's Principles, change the current Act's emphasis on the critical role of whānau, hapū and iwi in decision-making on Māori children and young people. There is some continuity of principles including the recognition of mana tamaiti (tamariki), whakapapa and whānaungatanga, and supporting capability building at whānau level. However, the Bill essentially shifts the balance away from whānau, hapū and iwi in favour of the over-riding requirement to place children quickly into care (in "safe, stable, loving homes" "at the earliest opportunity"). Whilst appreciating that the logic behind the term "at the earliest opportunity" is no doubt to reduce the number of interim placements and to provide stability, SSPA has concerns about the emphasis on speedy placement into permanent care. Taken in concert with other changes, we are concerned this will lead to risk-averse practice and result in more children in non-kin placements on a permanent basis.

2.2 This is an important and challenging policy debate especially in light of the preponderance of Māori children in care and a yet higher number in the youth justice system. Clearly the current system is failing Māori families but we cannot say with certainty that the problem lies with the current Act *per se* rather than how the Act has been put into practice.

2.3 CYF has struggled to give effect to the ground-breaking ideas in Puao Te Ata Tu and was not, for example, able to fully implement Iwi Social Services. There has been a lack of structural and organisational focus to support Māori families in the years since the 1989 Act, whether CYF was operating as a stand-alone department or as a unit of a larger entity (DSW or MSD). This concern is also present as we look ahead to the new Ministry. As one SSPA member commented: "*Our concern is that Te Ao Māori me ona Tikanga will get lost within the bureaucracy of the government department*".

2.4 There is no assurance that the same problems will be avoided with the current set of changes in legislation and in organisational structure. The majority of staff will be transferred to MVCOT and, without a concerted training and development effort, it is to be expected that their existing practice will continue. We encourage MVCOT to prioritise building staff capability to work effectively to deliver outcomes for Māori and welcome the stated intention to work in partnership with Iwi and Māori providers. Alongside this training we would support all staff being assisted in having an understanding of the way in which material circumstances and adversity impact on the care and protection of children and take this into account when completing assessments.

2.5 We should treat with caution the current policy trend to characterise the needs of children as being separate from, or even in conflict with, their cultural identity and with the rights and responsibilities of their family/whānau. The children and young people consulted as part of the Expert Panel's work expressed strongly that connection to their own culture is a critical part of their wellbeing. We are not convinced that the changes proposed in this Bill give clear effect to this, nor that they pay due respect to the rights of children and young people in this regard.

2.6 We recommend that the Purpose statement be amended to retain the emphasis on the importance of family, whānau and kin in the lives of children and young people. The Treaty of Waitangi is omitted as a basis to view children's rights. This omission contributes to the difficulty caused by the framing of the new Purpose statement with regard to whānau, hapū and iwi. We recommend that section 5(a) be amended to include reference the Treaty of Waitangi in the Principles. This would be consistent with the new section 7A stating the duties of the Chief Executive in relation to outcomes for Māori.

<u>Stronger focus needed on supporting families, whānau, hapū and iwi</u>

2.7 We further recommend a strengthened focus on family preservation to give effect to the proposed Purpose statements in section 4(d) and section 4(e), both of which emphasise the critical role of families, whānau, hapū and iwi in the lives of their children. We have a strong concern that the combination of early care planning and move to care "at the earliest opportunity" will undermine the often-difficult work of supporting families to create the environment where their children can remain. This will be a matter of Ministry practice as much as what is written in legislation but the legislation should give clear guidance about the primacy of preserving families wherever possible, consistent with the safety and wellbeing of the child.

2.8 The new Purpose statement has a list of 12 matters, with no direction as to priority or weighting. The list of Purposes in effect de-prioritises the focus in the 1989 Act on the importance of family and wider kin relationships in discharging their parental and kin responsibilities and in making decisions on their children. As presently drafted, the Purposes and the Care and Protection Principles appear weighted more towards placing children in care than supporting family preservation and do not give priority to whānau placement, when care placement is being considered.

2.9 We note Clause 8, amending section 5 Principles, does include a clear statement about the place of family/whānau, notably S5(b)(i) - (iv):

> **(b)** when making a decision about a child or young person, the child's or young person's place within their family is recognised, and, in particular,—
>
> **(i)** the primary responsibility for caring for and nurturing the well-being and development of the child or young person lies with their immediate family, whānau, or usual caregiver:
>
> **(ii)** their family, whānau, and usual caregiver are strengthened and supported to enable them to care for the child or young person, nurture their well-being and development, and reduce the likelihood of harm or offending:
>
> **(iii)** whenever possible, the relationship between the child or young person and their family, whānau, and usual caregiver is respected, supported, and strengthened:
>
> **(iv)** the relationship between the child or young person and their siblings is respected, supported, and strengthened:

2.10 It is not clear, however, what weight is to be put on these versus the concept of placing children in care at the earliest opportunity and we recommend this be clarified. Our view is that there should be a clear hierarchy of options for children and young people who "come to the attention of the department":

i. Concerted and well-resourced family preservation efforts. (We note and support the use of the term "strengthened and supported to enable them to care for the child or young person" in section 5(b)(ii) as it implies an approach of supporting and resourcing families and providing ongoing and meaningful support.)
ii. Whānau care options being explored at the beginning of the search for permanency
iii. Care placement outside the family, whānau or hapū

2.11 We accept and endorse the need for the child's safety and best interests to always be the paramount consideration, and note that this is the over-riding consideration in the 1989 Act. We do not recommend that either family preservation or whānau placement be pursued if they are clearly not in the child's best interest. Further, it is important that matters are conducted in a timely manner, acknowledging the difference in what time means for a child versus an adult. However, we suggest it would be helpful to social workers to better understand how they are to exercise professional judgement in the face of a lengthy and at times competing set of Purposes and Principles.

Increased accountability

2.12 Clause 12 of the Bill intends to give the Chief Executive greater accountability for delivering positive outcomes for Māori children and young people, through a new section 7A. These outcomes are expressed in broad terms and include external factors that MVCOT cannot directly give effect to. Achieving these outcomes will require a co-operative effort from a wide range of government departments and non-government organisations. This will be a test of how well all-of-government operations and policy objectives, enabled by the 2013 amendments to the State Sector Act, are working in practice.

2.13 Accountability to deliver outcomes consistent with the Treaty of Waitangi need further emphasis. The RIS on Legislative Support for Accountabilities in the New Operating Model does not specifically address how this accountability will be delivered or monitored. It is our view that the accountability mechanism provided in section 7A(3) is insufficient.

2.14 SSPA recommends amending clause 12 (section 7A(3)) to provide for an independent monitoring body to be set up in addition to the public reporting provided. We suggest an external board or other independent Māori monitoring entity be established for this purpose. Such a board would not have operational responsibilities but would oversee progress and drive improvements through in dialogue with Ministers and the Chief Executive. The board should report publically each year to give visibility to performance against agreed results.

## 3. Intensive intervention services

3.1 SSPA supports the concept of early intervention with children and young people before they reach the threshold for intervention on the basis of care and protection or youth justice concerns. We agree with the conclusion that Children's Teams, even if scaled up, are not a sufficient answer on their own because of their emphasis on 'case management' without taking into account socio-economic factors impacting on family/whānau.

3.2 It is important to recognise that this is a major net-widening move and will bring a greater number of children and young people within the scope of involvement by state agencies and will also increase the number of children in care. This involvement will be non-consensual and, while the intention is to use only when necessary, it is a distinct move away from the current minimum intervention approach and will require government agencies, notably MVCOT, Health and Education, to work effectively together and with providers. Public education will be required so that families and communities understand and support this change.

3.3 We endorse several aspects of the proposed intensive intervention approach:

- Inclusion of cumulative harm through lower-level maltreatment
- Planning for care concurrently with family intervention work, as a means of minimising repeat care placements – and we note the whānau ora outcomes framework is a good example of that approach
- Additional pathways for response being available, including wider use of FGCs and options for referral to community providers.

## 4. Care support

4.1 In general, SSPA supports the approach to care support. We welcome:

- And strongly endorse the aim to ensure the voice of children and young people in care decisions relating to them.
- The greater and more rigorous approach to care support including the way in which caregivers are recruited and, hopefully, practically supported.
- The aim of reducing complexity especially in Court proceedings as a means of reducing the time required to have plans approved.
- Repeal of sections 141 and 142 and the aim to provide children with disabilities with the same rights as other children.

4.2 We would support a list of key attributes of caregivers being included in the new guidelines. Alongside this, however, we believe there should be consideration of the range of skills and life experience caregivers may have so that care placement options are not unnecessarily restrictive both in respect of non-kin and family/ whānau carers. This also raises the issues of financial compensation for caregivers. It is our view that more caregivers need to be paid a wage to allow them to do the complex caring job properly. The supply of available, suitable and willing people who can afford to care for 'allowances' only is limited. Such an approach can cut out people who would foster professionally if they could afford to via drawing a salary.

4.3 The proposed care and protection principles emphasise stability and continuity. While the aim to make the first placement the right one – with early care planning a significant factor – it must be recognised that there will continue to be initial temporary placements in some cases.

4.4 While we understand the logic of early care planning, it is important this does not undermine the commitment to family preservation work with the child's family of origin.

4.5 We support the intention to have National Care Standards, but have reservations about these Standards being introduced in regulation (clause 119 – section 447(fa) (i) to (v)). While we appreciate this gives them force, it also creates inflexibility about changes and amendments. We believe it is sufficient to refer to the existence of National Care Standards in the new Act, and to establish their framework as the basis for the Chief Executive to develop and execute the Standards.

4.6 SSPA agrees that there is value in establishing a body to monitor the implementation of the standards of care, which will include the care services provided by SSPA members approved under section 396. The Office of the Commissioner for Children (OCC) has had a monitoring role in this area and we recommend the OCC be the agency appointed. The RIS does not indicate this option was considered. We recommend clause 120 (amending Regulations with a new section 447A) be amended to designate the Commissioner for Children as the entity to monitor and report on care standards (section 447A(a)).

4.7 We support the right of children and young people with disabilities to receive equitable treatment. We note and support the concerns raised by IHC on aspects of the Bill and trust that any matters that might impact negatively on these rights will be remedied in subsequent drafts of the Bill.

## 5. Youth justice

5.1 SSPA welcomes the strengthened recognition of care and protection issues for young people in the youth justice (YJ) system, the provision of better transition support for young people leaving the YJ system, and a greater emphasis on restorative justice processes and outcomes as part of YJ FGCs.

5.2 While we support mandatory legal representation for young people charged with serious offences at intention-to-charge FGCs, we are disappointed that wider application of legal representation was rejected as an option for other situations such as arrest. We recommend reconsideration be given to extending the right to mandatory legal representation to the situations outlined in options 2b and 2c (Regulatory Impact Statement *Enhancing Youth Justices Provisions*, pp20-21). This would be a welcome increase in the legal protections available to young people.

5.3 We support the creation of additional community-based options as an alternative to remand in custody. There is also a need for greater YJ residence capacity. In line with this, we support the call made by the Commissioner for Children to remove the legislation that allows young people to be detained in Police custody. The option of mandatory Court review every 24 hours where a young people is held in Police cells) clause 96, amending section 242) is not a suitable alternative, although it will be required if the law continues to allow young people to be held in Police cells.

## 6. Transition to independence

6.1 SSPA supports the new provisions to better manage the transition to independence for young people leaving care. As noted in our previous submission, we support the provision of care assistance up to age 21 and we support that being a legal entitlement for young people (clause 116, new section 386C).

6.2 We note that further work is being done to consider assistance up to age 25 in some cases and urge this be made available as needed. We acknowledge the significant cost of this but emphasise the importance of such assistance and ensuring that young people can rely on the support of those that have been an 'enduring presence' for them throughout their lives.

## 7. Information sharing

Unclear problem definition

7.1 SSPA has strong reservations about the proposals for information sharing in Clause 38. SSPA supports the sharing of information when child safety is at risk – this is already a duty under current child protection and related legislation and we suggest that problems relating to information flow are problems of agency practice not legislation. Our experience is that it is more likely that the over-riding problem for inter-agency management of cases is about determination of responsibility, especially lead roles, rather than managing around legislative barriers. We do not think the case has been made clearly in the policy process behind the Bill to change the current law. In contrast to the process to shape the 1989 Act, there has been little consultation in the development of this Bill including the information sharing provisions, which may account for the potentially impractical proposals contained in the Bill.

7.2 Clause 38 introduces additional complexity to the information sharing system, including giving social workers unfettered powers to require agencies to provide information. The complex interface between the CYPF Act and the Privacy Act does not appear to have been resolved, according to the *Information Sharing* RIS which notes the concerns of the Privacy Commissioner. It will be important that these matters are resolved, especially given the wider threshold for state intervention in families. NGO providers will be subject to these requirements and we signal a strong concern that the provisions set out in Clause 38 will not be workable, may not achieve the intended aims and may make the system worse.

Potential lack of alignment between privacy treatment in different parts of the system

7.3 We agree there is some logic in creating a bespoke system in the CYPF Act, rather than amending the Privacy Act and note the Health Act as being an example of this approach. If this proceeds, we ask the Select Committee to recommend a high degree of alignment between the Privacy Act and the CYPF Act with respect to privacy and information sharing. NGO providers will still need to be mindful of general Privacy Act principles, as well as operating within a different regime for information sharing in relating to children, young persons and families. We also understand changes have been agreed at a policy level relating to information sharing in the family violence area, with legislative changes to follow. It would be unreasonable for parliament to impose three different information sharing regimes for these inter-twined social policy areas.

7.4 The RIS notes some concerns held by the Privacy Commissioner. We have also discussed the information sharing proposals with the Office of the Privacy Commissioner and share their concerns. We are aware the Privacy Commissioner is recommending retaining the current provisions or, if that is not agreed, an enabling approach to information sharing for more limited purposes, primarily for risk assessment. Given this Bill is widening the net to include state action for early intervention, the approach the Privacy Commissioner is recommending seems a more measured approach and one we support. We would also recommend a mirror approach be taken when the select committee considers legislation to amend information sharing in cases of family violence.

Professional duty of care and duty of confidence

7.5 We support the retention of the ability to withhold information on the grounds of legal professional privilege, or where a disclosure may involve a breach of professional duties of care (S66B(a)). We note, however, that should the information sharing changes proceed unaltered, there are likely to be challenges and difficulties for professionals exercising their professional ethical obligations. The presumption of information sharing will test inter-agency relationships and professionals may feel they are being asked to breach their duty of confidence. This is exacerbated in an environment where the information shared may then be shared further with a wider group of people and questions of liability are likely to arise. This is one aspect of a number of concerns we have about the matter of client consent to information sharing.

Compliance costs for NGOs

7.6 The RIS notes that additional compliance costs will be incurred by all parties involved in information sharing, including NGOs that provide services under this legislation. The RIS does not recommend any compensation for these added compliance costs. The statement that this will "pay for itself over time" with lowered social costs is a benefit to the Crown but an imposition on NGOs, who will bear the added costs but not reap the benefit. We recommend the issue of additional compliance costs be revisited in the case of NGOs.

Identifiable client level data

7.7 The Bill sets up an expectation of a two-way information flow, and states that information sharing should be done for the purpose of keeping children safe (and not for other purposes such as providing evidence in other proceedings – section 66(34)(a) and (b).) We support this but note it appears to be at odds with the recent moves to require NGOs to collect and supply to MSD identifiable client information as a condition of contract. The express intention in this case appears to be significantly wider than child safety, and does not preclude the use of the information for other purposes. At the time of writing, the Privacy Commissioner is conducting an Inquiry into possible conflicts between this approach and the Privacy Act. We recommend the Select Committee seeks information about the outcome of this Inquiry.

Unintended consequence: deterring help-seeking

7.8 The prospect of government and non-government agencies information sharing may act as a deterrent to help-seeking from families, which would be a perverse outcome from a set of changes designed to increase intervention in families experiencing problems. It also remains unclear as to the purpose for which this information is being collected. We understand this concern is shared by the Privacy Commissioner. The sharing of anonymised data only (except in cases where a child is at risk) will go some way towards alleviating such concerns.

## 8. Duties of Chief Executive

8.1 Clause 11 seeks to amend section 7 Duties of Chief Executive. We have strong reservations about the duty to determine the return on investment to the government of services and activities. This is not an appropriate matter to be entered into legislation, as opposed to being advice provided to government by the CE. We recommend amending section (7(2)(b)(bab)(ii) to delete reference to determining the return on investment.