



SSPA Submission to Social Services Committee

Additional information requested by Social Services Committee on the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill

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Background

Social Service Providers Aotearoa (SSPA) made a written submission on the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (the Bill) and gave an oral presentation to the Committee.

SSPA is generally supportive of the Bill but raised concerns about the Workforce Settings aspect of the Bill. These proposals change the delegations currently made to social workers under the CYPF Act to the Chief Executive. These delegations may then be delegated by the Chief Executive to non-social workers in the new Ministry for Vulnerable Children Oranga Tamariki (the Ministry), to other public service departments or, with the Minister's agreement, to agencies outside the public service. SSPA's general view is that this is too broad a set of powers for the Chief Executive and that the power to delegate should be limited to specific designated functions and duties. There are child welfare and child protection concerns as well as public policy concerns underlying this view.

The Committee's request

SSPA provided examples of matters which should not be subject to delegation:

- Investigations into child abuse including child sexual abuse, on the grounds that this highly specialised investigative work requires specific expertise and is critical to securing the future safety of children and young people in an area where prosecution is difficult.
- The power to uplift a child and remove the child from their parents, on the grounds that this is a significant use of coercive power and should be subject to the controls and professional expertise of the statutory child protection agency.

The Committee sought further advice on this matter from SSPA and specifically SSPA's views on which functions should or should not be subject to delegation.

SSPA's response

Request further analysis from Ministry of Social Development

The Bill contains some 120 clauses which change the delegation from social workers to the Chief Executive. In the time available and with the resources SSPA has, it has not been possible to analyse each of these clauses in any depth and recommend an approach as to their suitability for delegation.

Given the State Services Commissioner's April 2014 guidance on the changes to the State Sector Act 1988, stating that the new powers of delegation should be used "selectively, safely and appropriately", it is appropriate that the Ministry of Social Development, as the departmental owner of the CYPF Act, conducts a thorough review of the legislation to advise the Committee on which powers may "safely and appropriately" be subject to delegation. It is not clear from the Regulatory Impact Statement that such analysis has been undertaken.

The timing of the Workforce Settings amendments is questionable. The Ministry is working on the operating model for the Ministry and it seems more logical to await the outcomes of that work and then determine the appropriate workforce settings.

SSPA's views on delegation of social work powers and duties

While SSPA has not been able to do a clause-by-clause analysis, we have given consideration to the principles that should underpin delegation of child protection functions, as well as the practical issues involved.

Because our primary focus is on NGO social service providers, we have concentrated on the role that NGO providers might play in a delegated system, rather than other government agencies.

SSPA believes that there are, essentially, two opposing arguments:

1. The delegations are core statutory powers that should be carried out by statutory social workers and should not be delegated to non-statutory social workers or others.

The key points of this view are:

- Significant coercive and investigatory powers are required, and CYF social workers operate alongside the NZ Police in many instances. These powers require the authority of legislation and are appropriately exercised by State servants.
- The Chief Executive of the department responsible for administering the CYPF Act has the ultimate accountability, even if specific duties are carried out by social workers who are departmental employees. The buck stops with the CE and their accountability is most effectively carried out through their employment relationship with those charged with operationalising these accountabilities, rather than through more hands-off arrangements such as contracts or service agreements.
- Consistency of approach is vital, and delegating these functions across a range of agencies will increase the risk of inconsistency. Resources will be required to monitor these functions, if distributed across multiple agencies, as a way of mitigating that risk.
- High levels of skill and expertise are required, as these functions demand specialist training and knowledge about child development, impacts of trauma, legal issues, cultural context and other considerations. With NZ's relatively small professional social work workforce, it is more efficient to build the appropriate workforce development in a single agency, given the need for specialist training.
- The statutory agency needs to be properly resourced to meet demand with reasonable and safe workloads.

2. The opposing view is that these statutory tasks need to be carried out to a high standard that is legally sound and prioritises child safety. The Government is responsible for these tasks being delivered but who performs the tasks is less the issue.

The key points of this view are:

- The Chief Executive has overall responsibility for the operation of the child protection system and can build on the partnership approach that is already in evidence in the Children's Teams and the long-standing system of contracted providers delivering child and family services and community services. A partnership approach does not remove the Chief Executive's accountability.
- Legislation that enables the statutory authority to partner with other agencies across a broader range of functions could generate more flexibility of response and lead to better outcomes for vulnerable children.
- The NGO sector has highly trained and capable social workers who, with the same level of resourcing as CYF social workers, could deliver at least some of the current functions in partnership with the statutory agency. In essence, social workers employed by CYF are not intrinsically more skilled or capable than those working in provider agencies that are contracted by CYF. Generally however provider agencies are less well-resourced by Government.
- An important aspect of delegation is partnership with Iwi/Maori providers, especially given the high numbers of Māori children and young people involved with CYF. A partnership approach should be recognised in accordance with the obligations of the Crown to Te Tiriti with tangata whenua to develop strategies to reduce the impacts of trauma in Maori children in the care or custody of the Crown. Where iwi have no professional representation in the social work field there should be discussions and contractual obligations to work with kaupapa Māori-based organisations in the first instance.
- Delivery of statutory functions by other agencies, whether in the public service or in the NGO sector, is not a cheaper option, as the level of investment required to build and maintain the capability needed is at least the same as in CYF.

Questions to be resolved

Each view has positive aspects and downsides. SSPA offers a series of questions to assist in the Committee's further consideration of the appropriate approach to this matter:

- What is the right balance between consistency of response and flexibility of response?
- What is the capability required and where, and how is it best achieved? Capability is required in terms of appropriate qualifications and knowledge base, the quality and usefulness of assessment tools, professional support and supervision, and the ability to work collaboratively with other professionals and agencies.
- How is accountability for the child protection system best achieved and how it is managed in a distributed system?

- In what circumstances would the functions currently designated as being carried out by a social worker be appropriately delegated to a non-social worker? Currently, while the Bill's explanatory notes refer to other professionals, the Bill does not specify the professional groups nor limit functions being delegated to others who may not be professionals. SSPA does not support an approach to delegations that is intended to diminish the role and expertise of social workers. We recognise the important role that other professionals may play, but urge that any delegation to non-social work professions or others who are not members of professional bodies be very carefully scrutinised.
- What are the features of a partnership approach that will need to be developed to make a success of a system if core statutory functions are delegated to NGO providers? A new model is needed that goes beyond the current contractual transactional model and that recognises the complementary strengths the statutory and community agencies bring to the work of child protection
- What is the likely impact for the NGO provider sector of accepting statutory functions under delegation? Some NGO providers will be willing to take on some of the statutory powers currently held by CYF social workers, while some NGO providers would see the inclusion of statutory powers as compromising therapeutic rapport with clients. It is important to ensure any delegation of functions does not weaken the overall capacity of the NGO social services sector. There are some concerns that providers that do not wish to take on statutory functions may be disadvantaged in contract negotiations for the services they do provide.
- What are the best mechanisms for transferring funding if and when the statutory functions are delegated?

In summary

SSPA does not recommend either a wholesale removal of any powers to delegate, nor a wholesale enabling of delegation.

Our original point remains valid: there should be closer consideration of which functions and powers must be retained by the statutory agency and which may be effectively and safely carried out by another agency. We recommend the Committee seek further information and analysis on this from the Ministry of Social Development.

SSPA has outlined a number of questions about delegation and its impacts for the Committee's further consideration.

Whatever view is reached, it is important that the Chief Executive's accountability for the safe and effective operation of the child protection system remains clear.