WHAREHEREHERE WHARETĀMIMANA
NO PRIDE IN PRISONS

Submission to the Select Committee on the Children, Young Persons, and their Families (Oranga Tamariki) Legislation Bill

No Pride in Prisons wishes one of its representatives to appear before the committee to speak to this submission:

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No Pride in Prisons (NPIP) is a prisoner advocacy organisation set up in early 2015, in part to advocate for and with incarcerated people, particularly those who are LGBTIQ. *NPIP* advocates for incarcerated people with respect to various issues, focusing primarily on issues of housing and prison placement, access to medical and counselling services, and complaints of sexual and other physical assault. The organisation has recently campaigned around allegations of cruel and inhumane treatment of prisoners.

NPIP is united in the belief that prisons are inherently violent places and imprisonment must be entirely avoided. We see prisons as treating the symptoms of injustice, rather than the root causes. Instead, we favour community-centred approaches to justice that heal and empower individuals and communities, such as that which was practised in pre-colonial Aotearoa where there was no equivalent to the criminal justice or state care systems. *NPIP* supports decolonisation and restoring tino rangatiratanga to the tangata whenua.

For these reasons, the organisation is concerned about this Bill and the unintended consequences it may produce.

This submission is made on behalf of *NPIP* by Kate McIntyre, Amber Bohanna, Kathryn Goodman and Dani Pickering.

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INTRODUCTION

No Pride in Prisons (*NPIP*) opposes the following change in the Children, Young Persons, and their Families (Oranga Tamariki) Legislation Bill:

1. **The removal of "whānau first" priority** in favour of a "child first" policy, along with other changes to phrasing that weaken the right for whānau, hapū and iwi to have input in their children's and young people's caregiving in clauses 8 and 13.

We support the submissions made by JustSpeak and Paora Crawford Moyle.

PART 1: WHĀNAU FIRST

1. *TE TIRITI O WAITANGI*

This Bill, if passed, would represent a substantial breach of *Te Tiriti o Waitangi*.

The General Policy Statement of this Bill affirms a "commitment to principles of Treaty of Waitangi". However, this is not backed up in several key new sections in the Bill.

When *Te Tiriti o Waitangi* was signed in 1840, Māori rangatira signatories never ceded sovereignty to the Crown, as confirmed by the Waitangi Tribunal in 2014.[1] *Te Tiriti o Waitangi* affirms Māori the right to tino rangatiratanga (self-determination), including over their lands, communities, families and everyday lives. Before settler contact in Aotearoa and in te ao Māori today, tangata whenua have managed where children and young people would be placed through whāngai, which encompasses Māori values and practices pertaining to adoption.[2]

In respect to *Te Tiriti o Waitangi*, the Crown is obligated to actively support through positive measures the practice of te reo Māori, along with other intangible social and

[1] Waitangi Tribunal, *The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o te Raki*, (Wellington: Waitangi Tribunal, 2014).
[2] George Graham, "Whangai Tamariki: A Custom Regarding the Adoption of Children," *Journal of the Polynesian Society*, 57, no. 3 (1848). Raymond Firth, *Economics of the New Zealand Māori,* 2nd ed., (Christchurch: Whitcombe & Tombs, 1959). Karyn Okeroa McRae and Linda Waimarie Nikora, "Whangai: Remembering, Understanding and Experiencing," *MAI Review* 1, (2006).

cultural goods termed "taonga",[3] of which the practice of whāngai is considered. Within whāngai, it is not a stranger who takes the child or young person into their home. It is other family or community members, and therefore the child or young person's connection to their whenua, whakapapa and whānau are all maintained.[4]

State intervention into the practices of adoption of Māori children and young people has historically caused much harm to families and communities, removing children and young people from their whānau, hapū and iwi and placing them with often racist and abusive Pākehā carers or foster parents.[5] It was against these practices that the integration of a "whānau first" priority within the Children, Young Persons, and their Families (CYPF) Act in 1989 was fought for.[6]

This Bill emphasises a supposed "child first" approach, centring the voice of the child or young person and their agency. This is used as justification for weakening "whānau first" priority, citing cases of re-abuse when children and young people are returned to whānau.[7] However, the idea of a "whānau first" versus a "child first" approach is a false dichotomy. A whānau first approach, when working properly, is a child first policy. Cultural connectedness is a key desire of Māori. According to a 2013 report, 70% of Māori surveyed thought that involvement with Māoritanga is important, and 34% of Māori adults desired more contact with their whānau.[8] To remove children and young people from their connection to their whenua, whakapapa and whānau critically undermines the importance of this key desire. Keeping a child or young person with whānau, hapu and iwi ultimately serves the best interests of the child or young person, enabling them to maintain their cultural connectedness.

[3] See: Waitangi Tribunal, *Report of The Waitangi Tribunal on the Te Reo Maori Claim*, (Wellington: Waitangi Tribunal, 1986), 23.
[4] John Bradley, "Kei Konei Tonu Matou: We Are Still Here," in *Adoption and Healing: Proceedings of the International Conference on Adoption and Healing* (Wellington: New Zealand Adoption Education and Healing Trust, 1997), 37-44.
[5] Karyn Okeroa McRae and Linda Waimarie Nikora, "Whangai: Remembering, Understanding and Experiencing," *MAI Review* 1, (2006).
[6] Requests by Māori on social policy are laid out in: Maori Perspective Advisory Committee, *Puao-Te-Ata-Tu: The Report on the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*, (Wellington: Department of Social Welfare, 1988): 10-11.
[7] Paula Rebstock, Mike Bush, Peter Douglas, Duncan Dunlop, Helen Leahy and Richie Poulton, *Modernising Child, Youth and Family Expert Panel: Interim Report*, (Wellington: Ministry of Social Development, 2016): 5-6.
[8] Statistics New Zealand, *Te Kupenga 2013 (English) – corrected*, (Wellington: Statistics New Zealand, 2014).

Although there are substantial issues with how the current legislation is being implemented,[9] if this Bill is passed into law, it will erode the right to Māori self-determination rather than build upon it, which is the Crown's duty. Sections pertaining to "whānau first" are weakened in the Bill via qualifiers, allowing for interpretations that could in practice inhibit the involvement of the child or young person's whānau, hapū and iwi.

Section 5(c) of the CYPF Act currently states:

> "(c) consideration *must always* be given to how a decision affecting a child or young person will affect—
>
> (i) the welfare of that child or young person; and
>
> (ii) the stability of that child's or young person's family, whanau, hapu, iwi, and family group".[10]

This Bill proposes to replace this section with:

> "(c) when making a decision about a child or young person, the child's or young person's place within their community is recognised, and, in particular—
>
> (i) consideration *is given* to the significance of the child's or young person's wider whānau, hapū, and iwi, and links to whakapapa or the equivalents in the culture of the child or young person:
>
> (ii) consideration *is given* to how a decision affects the stability of a child or young person (including their educational stability and connections to community and local networks), and the impact of disruption to this stability:
>
> (iii) informal networks and supports of the child or young person and their family *are acknowledged* and, *where practicable*, utilised".[11]

Sections 13(2)(b) and 13(2)(c) of the CYPF Act currently state the following principles:

> "(b) the principle that the *primary role* in caring for and protecting a child or young person lies with the child's or young person's family, whanau, hapu, iwi, and family group, and that accordingly—
>
> (i) a child's or young person's family, whanau, hapu, iwi, and family group should be supported, assisted, and protected as much as possible; and
>
> (ii) intervention into family life should be the minimum necessary to ensure a child's or young person's safety and protection".

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[9] Paora Moyle, "From Family Group Conferencing to Whānau Ora: Māori Social Workers Talk About Their Experiences," (Master's thesis, Massey University, 2013). http://mro.massey.ac.nz/bitstream/handle/10179/4731/02_whole.pdf?sequence=1.

[10] Children, Young Persons, and Their Families Act 1989, s 5(c). Emphasis added.

[11] Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill 2017, cl 8. Emphasis added

"(c) the principle that it is desirable that a child or young person live in association with his or her family, whanau, hapu, iwi, and family group, and that his or her education, training, or employment be allowed to continue without interruption or disturbance".[12]

This Bill proposes to replace these principles with:

"(b) interventions with families should, *where possible*, occur with the consent of the child or young person concerned and their parents, guardians, or usual caregivers, and should reflect the child's or young person's views and input:

(c) where a child or young person is at risk of being removed from their immediate family, whānau, or usual caregivers, the child's or young person's usual caregivers, family, whānau, hapū, iwi, and family group should, unless it is *unreasonable or impracticable* in the circumstances, be assisted to enable them to provide a safe, stable, and loving home to the child or young person in accordance with whakapapa and whanaungatanga".[13]

In the above sections and proposed amendments, substantial changes are made to the emphasis of whānau in the principles of the Act. As noted with the above italicisation, section 5(c) is changed from a situation where the stability of the child's whānau, hapū and iwi "must always" be considered,[14] to one where the child or young person's relationship to their whānau, hapū and iwi "is considered", "where possible".[15] This weakens the state's obligation to consider the stability of whānau.

Although whakapapa and whanaungatanga would be acknowledged in the proposed amendments, the new sections reduce the importance granted to whānau in deciding where to place the child. The CYPF Act, as it currently stands, affirms the principle that the "primary role" in caring for a child or young person "lies with the child's or young person's family, whanau, hapu, iwi, and family group".[16] Further, intervention in family life is kept to a "minimum necessary ensure a child's or young person's safety and protection".[17] The amendments state that interventions should occur with consultation from whānau, hapū and iwi only "where possible". This change, therefore, gives greater power of intervention to the State, while undermining the input from whānau.

[12] Children, Young Persons, and Their Families Act 1989, ss 13(2)(b)-(c). Emphasis added.
[13] Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill 2017, cl 13. Emphasis added.
[14] Children, Young Persons, and Their Families Act 1989, s 5(c).
[15] Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill 2017, cl 8.
[16] Children, Young Persons, and Their Families Act 1989, s 13(2)(b).
[17] Children, Young Persons, and Their Families Act 1989, s 13(2)(b)(ii).

Finally, the proposed amendment to section 13(2)(c) further reduces the role of whānau, hapū and iwi in supporting the child. The amended section would state that a child's whānau, hapū and iwi should be assisted in providing care for the child "unless it is unreasonable or impracticable", whereas section 2(b)(i) states that "a child's or young person's family, whanau, hapu, iwi, and family group should be supported, assisted, and protected as much as possible".[18] In other words, support for the whānau in caring for the child is reduced from being provided "as much as possible", a core principle of the Act, to being provided as an afterthought and only if it is not too difficult.

It is important to note that the current CYPF Act does not adequately support Māori self-determination with regard to their taonga, as outlined in *Te Tiriti o Waitangi*.[19] This Bill would, however, further erode the limited self-determination that exists in the current policy regime. From the discussion above, we see that the current CYPF Act has principles enshrined that emphasise the role of whānau, hapū and iwi in determining what is best for the child and for supporting them. This Bill would undermine this self-determination by (1) granting less consideration to the impact on whānau, hapū and iwi in decisions pertaining to a child's welfare (2) granting the state greater power to intervene in family-life and (3) placing less emphasis on assisting whānau, hapū and iwi to support children in their care..

We, therefore, submit that this Bill, if implemented, would be in breach of *Te Tiriti o Waitangi*. As noted above, *Te Tiriti* guarantees the right of Māori for self-determination of their taonga, including their children. This Bill would undermine what little existing self-determination already exists, granting further authority to the Crown and not Māori to determine the best interests of their children.

2. INTERNATIONAL LAW

This Bill, if passed, would represent a substantial breach of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which New Zealand is a signatory.

The preamble to UNDRIP affirms "the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child".[20] This is reaffirmed in article 7(2), which declares that "Indigenous peoples have the collective right to live in freedom, peace and

[18] Children, Young Persons, and Their Families Act 1989, s 13(2)(b)(i).
[19] Paora Moyle, "From Family Group Conferencing to Whānau Ora: Māori Social Workers Talk About Their Experiences," (Master's thesis, Massey University, 2013). http://mro.massey.ac.nz/bitstream/handle/10179/4731/02_whole.pdf?sequence=1.
[20] *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 10612, A/Res/61/295 (2007), preamble.

security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group".[21]

The UNDRIP effectively reinforces the same rights for Indigenous peoples that *Te Tiriti o Waitangi* promises Māori. Whereas *Te Tiriti* guarantees Māori tino rangatiratanga pertaining to their taonga generally, which includes children, UNDRIP specifically states Indigenous peoples' right to self-management of their children and young people. The changes to the "whānau first" policy, as noted above in the proposed changes to sections 5(c) and 13(2)(b)-(c), erode the ability for whānau, hapū and iwi to decide what is in the best interests of their children and grants the Crown greater power to intervene in determining that is best for the child.

These changes would not only breach *Te Tiriti o Waitangi, but* would also undermine the rights of indigenous communities to retain responsibility for raising a child, as affirmed in UNDRIP.[22] Any action by the Crown to remove Māori children from their whānau, hapū and iwi to be placed in the care of Pākehā families is in violation of article 7(2) of UNDRIP, which affirms the "collective right to live in freedom, peace and security as distinct peoples", which includes freedom from the forcible "removing children of the group to another group".[23]

Of course, the Crown does regularly remove Māori children from their whānau, hapū and iwi, in breach of article 7(2) of UNDRIP. According to University of Auckland Lecturer Dr Ian Hyslop, the effect of this Bill would be "earlier and more frequent removal of children from parental care, into permanent alternative care and a reduced emphasis on securing whanau placement for children who cannot safely remain with immediate family".[24] In other words, it would increase the number of Māori children who are removed from their whānau, hapū and iwi. This Bill thus represents a flagrant disregard for the rights of Māori as tangata whenua, as agreed to by the Crown in becoming a signatory to UNDRIP.

3. INSUFFICIENT EVIDENTIAL SUPPORT FOR CHANGE

[21] *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 10612, A/Res/61/295 (2007), art 7(2).
[22] *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 10612, A/Res/61/295 (2007), preamble.
[23] *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 10612, A/Res/61/295 (2007), art 7(2).
[24] Ian Hyslop, "New child protection laws a regressive move," *NZ Herald*, Oct. 12, 2013, http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=11727000.

According to the *Modernising Child, Youth and Family Expert Panel: Interim Report*, the reasons given as to why the "whānau first" priority is being removed reads:

> "In 2010, 23 per cent of children who exited care and returned to their biological parents were re-abused and 10 per cent of those who exited care to kin or whānau were re-abused within 18 months. By contrast, re-abuse rates are low at one percent for those exiting care in non-kin or non-whānau placements".[25]

Incidents of abuse in cases of children exiting care to their biological parents, kin, or whānau, are not the result of "whānau first" priority. "Whānau first" does not mean keeping children with their biological parents, or with those they are biologically closest to regardless of their safety, but prioritising finding a safe home within their whānau, hapū and iwi. These are vast social networks which encompass much more than blood ties. Removing "whānau first" priority assumes that no one within the vast social networks of whānau, hapū and iwi would be able to offer a safe home for a child or young person. Such an assumption is racist and certainly does not put the child first.

PART 2: INAPPROPRIATENESS OF OMNIBUS BILL

This Bill is being presented as an omnibus Bill. It collates a number of changes to social policy in a variety of areas of social development. While we accept that omnibus bills are regularly adopted by parliament to deal with a high workload, it is especially inappropriate for this Bill to be presented as one. It covers many diverse components which, while interconnected, should not be voted on together. The new sections on information sharing, the proposed changes to youth justice, and the proposed changes to "whānau first" priority should have been proposed in separate bills to be subjected to democratic scrutiny, and to allow time for MPs and all those affected to research and assess the potential risks that would come with these changes to social policy.

RECOMMENDATIONS

We would like to reiterate the following recommendations for the committee's consideration:

[25] Paula Rebstock, Mike Bush, Peter Douglas, Duncan Dunlop, Helen Leahy and Richie Poulton, *Modernising Child, Youth and Family Expert Panel: Interim Report*, (Wellington: Ministry of Social Development, 2016): 5-6.

1. That Clauses 8 and 13, where they relate to “whānau first” priority, of the Children, Young Persons, and their Families (Oranga Tamariki) Legislation Bill be rejected. The removal of children from their whānau, hapū and iwi must be entirely avoided.
2. That the various social policy changes be presented in separate bills so that more thorough attention might be paid to the potential risks involved in their implementation.