January 2022

To Social Services and Community Committee

Please find below DPA’s submission on the Oversight of Tamariki System and Children and Young People’s Commission Bill.

## Disabled Persons Assembly NZ

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# Introducing Disabled Persons Assembly NZ

The Disabled Persons Assembly NZ (DPA) is a pan-impairment disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people be recognised as valued members of society. DPA and its members work with the wider disability community, other DPOs, government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

# Acknowledgements

DPA would like to thank VOYCE – Whakarongo Mai for their work in this area and supports their submission on this bill.

# DPA’s recommendations

1. DPA strongly urges that the Independent Children’s Monitor sits under the Office of the Children’s Commissioner. We see this as fundamental to its effectiveness.
2. DPA recommends that greater engagement with young people happens before this Bill is progressed any further. Provision for ongoing engagement with young people must also be included in the Bill; and all necessary supports to enable young disabled people to be fully engaged must be resourced and provided.
3. DPA recommends that at least 50% of the Commission Board must whakapapa Māori and that the ICM should adopt a governance structure that reflects true partnership with Māori.
4. DPA recommends that the ICM has strong powers to enforce accountability, including unrestricted power of entry with clear feedback loops for all key stakeholders.
5. DPA recommends that monitoring, complaints and advocacy functions be brought together to be most effective at monitoring, protecting and promoting the rights of tamariki and rangatahi.
6. DPA recommends that a child-specific agency (such as the Office of the Children’s Commissioner) manage complaints about Oranga Tamariki.

# United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

## **Government obligations:**

The UNCRPD[[1]](#endnote-1) places an obligation on Government to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people without discrimination of any kind on the basis of disability.

## **UNCRPD is the minimum standard:**

DPA upholds the UNCRPD as the minimum standard for our participation in society.

## **Partnership with DPOs (Article 4.3):**

The implementation of the UNCRPD depends on a partnership between DPOs and the Government. This is highlighted in Article 4.3 which says governments shall consult closely with and actively involve disabled people, including disabled children, through their representative organisations. This partnership goes beyond just consulting with disabled people. It mandates governments to actively involve disabled people and our organisations in everything that affects us.

Other key Articles of the UNCRPD relevant to this submission are:

## **Article 3 - General Principles - in particular Article 3(8)**

“Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”

## **Article 5 - Equality and Non-Discrimination**

## **Article 7 - Children with Disabilities**

## **Article 12 - Equal Recognition Before the Law**

## **Article 13 - Access to Justice**

## **Article 23 – Respect for Home and the Family**

With Sections 3 and 4 being of particular relevance to this submission:

**3.** *“Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.”*

**4.** *“Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.”*

## Other relevant treaties and policy

## United Nations Convention on the Rights of the Child (UNCRC)[[2]](#endnote-2)

## United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[[3]](#endnote-3)

## New Zealand Disability Strategy (2016-2026)

Outcome 4 – Rights Protection and Justice

Outcome 7 – Choice and Control[[4]](#endnote-4)

## Abuse in Care – Royal Commission of Inquiry

The investigation into abuse in State and faith-based disability care settings is examining the care of disabled people in multiple settings. The Inquiry has released a number of reports to date and will make recommendations pertinent to the monitoring and independent oversight of care settings for disabled children and young people.

**The submission**

DPA opposes this Bill in its current form.

Disabled children and young people are overrepresented in the care and services of the Oranga Tamariki system, any changes to the monitoring and oversight of this system will have a disproportionate impact on the future wellbeing of disabled children and young people and their whānau.

DPA is concerned that the Bill ignores many reports on what independent and effective monitoring of the Oranga Tamariki (OT) system should look like.

If this Bill progresses in its current form, there is a high risk of continuing the five year cycle of a broken care system given a new name. To ensure meaningful change, we need an effective watchdog that has authority to independently monitor and protect tamariki, rangatahi and their whānau in the Oranga Tamariki system.

# Independent Children’s Monitor Lacks Independence

DPA is concerned that if, as proposed in the bill, the Independent Children’s Monitor (ICM) sits alongside the Education Review Office (ERO) then it will lack the essential separation from Government needed to provide effective and **independent** monitoring of OT significant and coercive powers. The contradiction of having the term ‘independent’ in a government agency’s title demonstrates a lack of integrity, transparency and clarity.

There are legal requirements making it almost impossible to criticise the Government if you are within a government department. This makes the ICM’s ability to hold Government agencies to account fundamentally flawed, and does not instil public trust and confidence in how the Oranga Tamariki system will be monitored.

Several previous reports into Oranga Tamariki (EAP, Beatie, MSD and Cabinet reports and papers) have all recommended the ICM should sit under the Office of the Children’s Commissioner (OCC).

DPA strongly supports this as it ensures the monitor sits within an independent child-focussed rights-body instead of a compliance-driven systems-focussed Government department.

## Recommendation 1

## DPA strongly urges that the Independent Children’s Monitor sits under the Office of the Children’s Commissioner. We see this as fundamental to its effectiveness.

# Tamariki are not at the heart of this bill

DPA is concerned that:

* The proposed changes will create an unnecessarily complicated oversight framework focussed on the needs of the “Oranga Tamariki system” rather than the rights, interests and wellbeing of tamariki and their whānau.
* There has been a lack of consultation in the process of developing this legislation and there is no guarantee within the Bill for ongoing consultation or having regard to the voices of young people, including young disabled people who have experienced state care.
* Not enough time has been given to young people to provide feedback on this Bill, due to the short timeframe and impact of the summer school holidays. This is particularly true for young disabled people, some of who may need longer or require support to provide feedback.

## Recommendation 2

DPA recommends that greater engagement with young people happens before this Bill is progressed any further. Provision for ongoing engagement with young people must also be included in the Bill; and all necessary supports to enable young disabled people to be fully engaged must be resourced and provided.

# Token Māori partnership

DPA is concerned that:

* The ICM is proposed to have a Māori Advisory Board made up of members with “experience and knowledge of tikanga Māori” – this is token and does not provide adequate application of, or commitment to, Te Tiriti o Waitangi.
* The new Children and Young People’s Commission is proposed to be governed by a Board with at least half the members “having Māori knowledge; and experience in, and knowledge of, tikanga Māori”.

## Recommendation 3

DPA recommends at least 50% of the Commission Board must whakapapa Māori and that the ICM should adopt a governance structure that reflects true partnership with Māori.

# No Powers to Enforce Accountability

DPA is concerned that:

* The proposed oversight system lacks the power to enforce accountability, an independent monitor must be able to speak out when poor or harmful practice is identified.
* The proposed role of the ICM focuses on service compliance rather than rights-based monitoring of a system.
* Without true independence, the ICM can’t objectively assess the use of ‘coercive powers’ by the Oranga Tamariki system to ensure rights are upheld.
* No clear feedback mechanisms which would drive ongoing strengthening of Oranga Tamariki and other related (education, health) systems for tamariki and rangatahi.
* Limits to the Monitor’s powers of entry to carry out monitoring duties in places housing young people and children in care. This creates loopholes that could easily be abused and prevent unsafe practice and abuse from being identified.

## Recommendation 4

DPA recommends that the ICM has strong powers to enforce accountability, including unrestricted power of entry with clear feedback loops for all key stakeholders.

# Monitoring, Complaints and Advocacy

DPA is concerned that:

* By keeping monitoring, complaints and advocacy functions separate, relevant information and processes end up siloed and this will have the effect of both reducing the effectiveness of each function and of delaying outcomes for tamariki and rangatahi. Having these three functions side by side is recommended by the United Nations Committee on the Rights of the Child and has been found to increase accountability and effectiveness in other jurisdictions.
* UN guidance states that National Human Rights Institutions (NHRI) “should be able, independently and effectively, to monitor, promote and protect children’s rights” and that “their mandate should include as broad a scope as possible for promoting and protecting human rights”.[[5]](#endnote-5)

## Recommendation 5

DPA recommends that monitoring, complaints and advocacy functions be brought together to be most effective at monitoring, protecting and promoting the rights of tamariki and rangatahi.

# Complaints sitting in an adult-orientated system

DPA is concerned that:

* The proposed complaints system ignores multiple reports (Beatie 2018; Royal Commission Abuse in Care 2021; UNCRC 2002, 2016, 2020) that have highlighted the need for simplification, streamlining and improved access for tamariki, rangatahi and their whānau .
* The Ombudsman is not a child-centred entity – the OCC was established because the needs and rights of children and young people require special attention and protection.

## Recommendation 6

DPA recommends that a child-oriented agency (such as the Office of the Children’s Commissioner) manage complaints about Oranga Tamariki.

# Conclusion

DPA believes strongly that significant changes are needed to achieve a truly independent and effective monitoring system of the Oranga Tamariki system. However, we strongly feel that this Bill as proposed actually weakens rather than strengthens progress to an independent and effective monitoring system. DPA strongly urges the Committee to retain and strengthen the powers of the Office of the Children’s Commission to ensure that it can be a truly independent and effective Monitor in regards to the Oranga Tamariki system.

1. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> [↑](#endnote-ref-1)
2. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [↑](#endnote-ref-2)
3. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> [↑](#endnote-ref-3)
4. <https://www.odi.govt.nz/nz-disability-strategy/> [↑](#endnote-ref-4)
5. [http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiQql8gX5Zxh0cQqSRzx6ZcNR3YdFwaRoLFkDFvNRlVoE9r590QoHaQTQRwonqARWV9Blutv2Nz3ITQ%2BFebW%2BlOKrOPw9z5qNBGnjUDapSbL) [↑](#endnote-ref-5)