

YouthLaw Aotearoa

Oversight of Oranga Tamariki System and
Children and Young People's Commission
Bill 2022

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Who we are

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are a charity and part of the nationwide network of twenty-four community law centres throughout Aotearoa. Our service provides free legal advice and advocacy specifically for children and young people under 25 years of age. We help children and young people assert their rights in a couple of ways:

- Our lawyers in the legal advice team support children and their families with information and advice to help them navigate legal matters. Frequently, we refer children, young people, and their families to the Children's Commissioner.
- We run legal education workshops for children and young people or those supporting them.
- We publish youth-friendly information resources, undertake research, and make submissions on law and policy affecting children and young people.

This submission is informed by YouthLaw Aotearoa's insights from working with children and young people across New Zealand for over thirty years.

The submission has been prepared by Imogen Burrows and Charlie Harmer, Law Reform

Volunteers, Sarah Butterfield, a solicitor on our legal team, and our YouthLaw staff and board.

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YouthLaw Aotearoa Submission

YouthLaw Aotearoa acknowledge the government's continued commitment to the welfare of children and young people under Oranga Tamariki care. However, we have serious concerns about the proposal to abolish the Children's Commissioner role.

We support the submissions by Save the Children, and the Children's Rights Alliance.

The aim of our submission is to give context about YouthLaw Aotearoa's interaction with the Children's Commissioner and what our clients have told us about their experiences with the Children's Commissioner.

We offer the following comments on the Oranga Tamariki System and Children and Young People's Commission Bill.

Children's Commissioner

YouthLaw Aotearoa are strongly opposed to the disestablishment of the Children's Commissioner role, as the Commissioner is the champion of all child and youth rights in New Zealand, and the community has trust and respect in the role.

Children's Commissioner as champion for all children and youth rights

YouthLaw Aotearoa provides advice and advocacy on a wide range of legal areas - school, youth justice, human and personal rights, employment, consumer, tenancy, guardianship, legal ages, criminal (youth justice and adult), family violence, financial, contractual, medico legal, mental health, and welfare.

Often, when children's or young person's rights are being infringed upon, we will advise them to contact the Children's Commissioner. We tell our clients that the Children's Commissioner is the advocate for all children and youth rights in New Zealand, and that the office is independent. We also tell our client's that the Commissioner may not necessarily be able to help with their individual complaints, but their issue may help to demonstrate a wider issue or concern that the Commissioner can advocate for. At times, the Children's Commissioner has advocated on issues that we observe frequently. For example, the

Children's Commissioner has provided advocacy for children with disabilities and their experiences at school, spoken out against the Principals' Federation proposal that schools refuse Ministry of Education directed enrolments, and spoken out against the underreporting of restraints in schools.¹

The Children's Commissioner has been particularly important in the absence of an Independent Panel for school complaints. We understand that Disputes Panels have been legislated for under the Education and Training Act 2020, but no budget has been provided for their establishment. In the absence of an education disputes appeal structure, the Children's Commissioner's role is vital to intervene in individual cases. The Children's Commissioner will also be vital to advocate about systemic educational issues when the Disputes Panel is operational.

Trust in Children's Commissioner role

The Children's Commissioner provides a vital monitoring and advocacy role in Aotearoa and has done so for many years. Our clients tell us that they trust the Children's Commissioner and feel able to go to the Commissioner with

complaints and concerns. Clients have also told us that they feel heard, and that their issues are taken seriously by the Children's Commissioner. We are concerned that the abolishment of the Children's Commissioner could result in:

- Less complaints as people do not feel that they can trust the Ombudsman in the same way or report their concerns to the proposed Commission.
- Important issues, around schools, early education, disability, and student rights will not be advocated for in the way they have been by the Commissioner.
- Children, young people, and families will feel even more disenfranchised.
- There will be less focus on children, youth, and students' rights.

¹ John Gerritsen, "Boy with autism asks Children's Commissioner: 'Can you please come to my school and help me?'" (27 April 2021) RNZ
<<https://www.rnz.co.nz/news/national/441261/boy-with-autism-asks-children-s-commissioner-can-you-please-come-to-my-school-and-help-me#:~:text=The%20Children's%20Commissioner%20has%20warned,of%20an%20iceberg%20of%20problems.&text=Judge%20Andrew%20Becroft%20intervened%20in,his%20involvement%20in%20a%20fight>>
Morning Report "Children's Commissioner criticises Principals' Federation call to members over violent

kids" (3 March 2021)
<<https://www.rnz.co.nz/national/programmes/morningreport/audio/2018785869/childrens-commissioner-criticises-principals-federation-call-to-members-over-violent-kids>>
Sam Sachdeva "Children's Commissioner concerned about restraint under-reporting" (10 September 2021)
<<https://www.newsroom.co.nz/childrens-commissioner-concerned-about-restraint-under-reporting>>

Ombudsman

YouthLaw Aotearoa seriously question whether the Ombudsman is the appropriate body to deal with complaints from children and young people. In our experience, the Ombudsman's complaints process is not youth-sensitive and can be slow. We understand that it can take the Ombudsman several months to receive, investigate, and then issue findings on complaints. This is not to dismiss the important and valuable work that the Ombudsman does. However, it is important to note that the Ombudsman is the complaint body for process complaints about any public body, so by design, they are not children and youth focused in the way that the Children's Commissioner is.

We also understand that the Ombudsman cannot investigate every complaint that is made to them. Our understanding is the Ombudsman will not be able to investigate on issues about rights if there are no process errors – as fundamentally the Ombudsman is concerned with investigating process. The benefit of the Children's Commissioner is that they can respond quickly to complaints – in the case of the young person above who contacted the Children's Commissioner – the Commissioner was able to speak to the principal prior to the suspension meeting.²

The Ombudsman also only has the power to make recommendations. We are concerned that the Ombudsman's recommendations will not have the same weight as the Children's Commissioner's intervention.

The Ombudsman also does not have the same advocacy function as the Children's Commissioner. Whilst the Ombudsman can publish reports with their recommendations, this is not the same as the Children's Commissioner publicly advocating for children and youth rights. We do not support the Bill's proposal to remove the Children Commissioner's authority to receive complaints.

Clause 120 of the Bill amends Clause 10(4) Schedule to the Oranga Tamariki (Residential Care) Regulations 1996. This removes the ability of the Children's Commissioner to carry out an investigation when a child or young person is not satisfied with the outcome of a grievance panel's review. The Ombudsman continues to have the authority to carry out an investigation. As discussed, the Ombudsman's complaint process is not child/youth sensitive. YouthLaw Aotearoa submit that the Children's Commissioner should retain the ability to carry out an investigation when a child is unsatisfied by the outcome of a grievance panel.

² John Gerritsen, "Boy with autism asks Children's Commissioner: 'Can you please come to my school and help me?'" (27 April 2021) RNZ <[https://www.rnz.co.nz/news/national/441261/boy-with-autism-asks-children-s-commissioner-can-you-](https://www.rnz.co.nz/news/national/441261/boy-with-autism-asks-children-s-commissioner-can-you-please-come-to-my-school-and-help-me#:~:text=The%20Children's%20Commissioner%20has%20warned,of%20an%20iceberg%20of%20problems.&text=Judge%20Andrew%20Becroft%20intervened%20in,his%20involvement%20in%20a%20fight)

[please-come-to-my-school-and-help-me#:~:text=The%20Children's%20Commissioner%20has%20warned,of%20an%20iceberg%20of%20problems.&text=Judge%20Andrew%20Becroft%20intervened%20in,his%20involvement%20in%20a%20fight](https://www.rnz.co.nz/news/national/441261/boy-with-autism-asks-children-s-commissioner-can-you-please-come-to-my-school-and-help-me#:~:text=The%20Children's%20Commissioner%20has%20warned,of%20an%20iceberg%20of%20problems.&text=Judge%20Andrew%20Becroft%20intervened%20in,his%20involvement%20in%20a%20fight)>

We recommend that the Children's Commissioner continues to retain the authority to receive complaints from children and young people about Oranga Tamariki and all other issues related to children, youth, and student rights.

Fragmented System

The Children's Commissioner is the champion for all children and youth right issues. As stated above, YouthLaw Aotearoa refer clients with all different legal rights issues to the Children's Commissioner, as the Commissioner is the main advocate for all children, youth, and student rights. The Commissioner's importance has also been strengthened in recent years by the establishment of the Assistant Māori Commissioner role.

The Bill's proposed plan to scrap the Children's Commissioner role, establish a Commission, establish a monitor, and shift complaints to the Ombudsman fragments the 'one source' for child, youth, and student rights. We submit that this fragmented system will be confusing for our clients. The proposed system could also be retraumatising for clients who must tell their stories to multiple public bodies.

We support the establishment of an Independent Monitor for Oranga Tamariki. However, we submit that the Monitor should be within the office of the Children's Commissioner. The benefit of being within the Commissioner's office is that the office would remain as the "one source" for Oranga Tamariki complaints and advocacy, and this would assist public perceptions of independence.

Accessibility

We have also observed accessibility issues that bar children and young people from making complaints about Oranga Tamariki.

Lack of complaints from young people in Youth Justice residences

The current system relies on young people to:

- Recognise that they have a complaint.
- Find out complaint structures.
- Make a complaint through the correct structure.

Unfortunately, many young people will struggle to do those three things. Particularly young people who may have disabilities, speech and language difficulties, lack of trust in authority, and ignorance of their rights. Many young people in Youth Justice have these very issues. Unfortunately, even when we are contacted by young people who have recognised they have an issue and want to make a complaint, they are often deterred from making complaints by the complexity of the complaint structure and process.

Need for trust and safety

We submit that children and young people need to feel safe and supported to make complaints. To feel safe and supported, young people and children may need:

- A safe person they have a relationship of trust with to disclose issues to.
- Trust that the complaint will be followed through.
- Assurance and affirmation by the safe person that the young person's issues are valid.

- Know their options to make a complaint.
- Be supported through complaint process.

YouthLaw Aotearoa submit that the focus of any legislative changes should be based on improving accessibility of complaint/advocacy services for children and young people, particularly for young people in youth justice residences. Children and young people should also be consulted about any changes.

Overall Recommendations

Overall, YouthLaw Aotearoa does not support many parts of the proposed Bill. We strongly submit that the Children's Commissioner role should remain and should not be replaced by a board. The Office of the Children's Commissioner should also retain the authority to receive complaints, intervene in individual cases, and advocate for all children, youth, and student rights. We are also concerned that the Bill fails to recognise accessibility barriers for young people, children, and families who wish to make complaints. To improve public trust children and young people need to be empowered to voice their concerns.

We do support the establishment of a Monitor, but we submit that this Monitor should be within the Office of the Children's Commissioner.

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