

Regulatory Standards Bill

Submission

YouthLaw Aotearoa

Level 1, Westfield Shopping Centre
5 Leyton Way
Manukau City Centre
Auckland

0800 UTHLAW
(0800 884 529)

www.youthlaw.co.nz



YL

Contents

WHO WE ARE	3
YOUTHLAW AOTEAROA'S SUBMISSION.....	4

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. We are a specialist law centre focusing on the legal needs and interests of children and young people under 25 years of age.

This submission is informed by YouthLaw Aotearoa's insights from working with children and young people across New Zealand for nearly 40 years.

Contact:

Darryn Aitchison

General Manager

YouthLaw Aotearoa

darryn@youthlaw.co.nz

YOUTHLAW AOTEAROA'S SUBMISSION

YouthLaw Aotearoa has been providing legal services to children and young people in New Zealand for nearly 40 years. We are the only organisation in Aotearoa who provides specialist legal services exclusively for children and young people. Through our frontline legal work with tamariki and rangatahi, we have developed a distinctive insight into how laws and regulations affect young people in Aotearoa. We have two primary objections to this bill:

- We believe the design principles outlined in the bill do not protect the interests and wellbeing of children and young people in Aotearoa, and in fact, are likely to cause irreparable harm to their interests.
- We believe the bill is counter to modern democratic thinking and risks irreparable harm to our democracy and society.

Children and Young People

Children and young people have told us they want a world which is peaceful, where there is strong social cohesion, where individuals are free to express and be themselves, and where diversity is protected.

The goals and aspirations of children and young people are closely aligned to the goals and aspirations all countries have promised to pursue and uphold on behalf of all children.

The United Nations Convention on the Rights of the Child (UNCROC), ratified by New Zealand in 1993, makes it clear the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The convention makes it clear that childhood (children are?) is entitled to special

attention, care and assistance. As committed to in UNCROC, for a child to reach “the full and harmonious development of [their] personality” they should:

- grow up in a family environment, in an atmosphere of happiness, love and understanding
- be brought up in the spirit of the ideals of peace, dignity, tolerance, freedom, equality and solidarity

The reality is vastly different:

- 582,000 young people (aged 15-24) are exposed to high legal need at any one time
- 164,000 children and young people alive today will experience persistent, intergenerational, life-damaging disadvantage. Compared to their peers, they are:
 - 15x more likely to be disengaged from school, empowerment or other trainings
 - 13 x more likely to end up on adult benefit for long time
 - 21 x more likely to have a corrections sentence

Every day, YouthLaw Aotearoa witnesses the harm poor legislation and poor regulation does to children and young people. We see it in housing, social security, health and education. Poor law and poor regulation push children and young people into poverty, homelessness, state care, youth justice and, ultimately, prison.

The Royal Commission into Abuse in Care is the most glaring example of poor law and regulation to come under the spotlight in recent times. This appalling part of our history

impacted all parts of the community. But make no mistake – the majority of people who experienced abuse went into care as children or young people.

Why do we raise this example? We raise it because the design principles required to avoid this happening again are entirely absent from the RSB. To ensure children and young people thrive – law and regulation need to reflect the legal principle stated in UNCROC - namely, that *peace, dignity, tolerance, freedom, equality and solidarity* are necessary conditions to ensure children thrive and their inalienable rights are upheld. The Bill does not reflect this principle and its absence creates a conditions for harm to occur.

We are not scaremongering here. The need for effective regulation was recognised by Minister responsible for the bootcamp legislation. When the risks of repeating the horrors outlined in the Royal Commission were raised with her – she responded that regulation would provide the necessary elements of protection. However, if those regulations were prepared in the shadow of this Bill there is a very real chance the board would find them in breach of the RSB standards.

In our view, this bill increases the probability the horrors of the Royal Commission will be repeated, and failure to include child protection and children's rights within the RSB standards is a breach of our international obligations under the convention.

We acknowledge the Bill contains standards relating to the rule of law and promoting freedoms. Defenders of the Bill may argue this offers sufficient protection to the inalienable rights of children. They do not.

Firstly, legislation is interpreted in relation to its stated purpose. The stated purpose of this Bill is silent on the broader human rights promised to all citizens of Aotearoa, the specialist status of children's rights, and the duty of law makers

to promote and protect the wellbeing of children (which, in our view, includes the most disenfranchised of all - the future generations).

Secondly, Bill's focus on freedom and liberties is misguided. In international law, *freedom* is a consequence of upholding universal human rights - not the other way around. And freedom is just one consequence among many – by promoting human rights we also promote tolerance, dignity, and solidarity - all of which must be present if children and young people are to thrive.

We believe this bill poses a real threat to the wellbeing and interest of children and young people in Aotearoa. Its focus is far too narrow to direct policy maker attention to the interests and well-being of children and young people.

Democracy

We believe this Bill is undemocratic – in two ways.

Firstly, there are several legal principles which come to be accepted as central to our modern democracy, and the legitimacy of our democracy now rests upon those principles being expressed in our laws and upheld by the Executive.

Our system contains fundamental rights which are based on the idea every human life is valuable and worthy of dignity. The commitment to uphold universal rights of the human family is the foundation of freedom, justice and peace in the world.

Broadly speaking, they are the same rights expressed convention mentioned above - *peace, dignity, tolerance, freedom, equality and solidarity*. The Bill does not make these principles central to good law. That absence makes this Bill inconsistent with modern democratic principles – which requires our democracy to uphold international law and human rights.

These principles exist for good reason. They are not just “*nice to have*”. They have been developed in response to war, atrocities, persecution of indigenous populations and other barbaric behaviour humans are capable of, including behaviour perpetrated by democratic societies.¹ The absence of these commitments in this Bill creates significant risk those protections will become subservient to the standards outlined in the Bill or directed by the responsible Minister.

Secondly, the Bill places limits on the freedom of Parliament. While not binding Parliament or the Executive, the Bill creates a new check on their authority. As such, the Bill touches on the sovereignty of Parliament and our constitutional arrangements.

We support public discussion on principles of good law making and regulatory design. We see the impact of poor law making on children and young people everyday. However, many of the design issues we see will not be addressed by this Bill. For example, a partial solution legal harm to young people is to strengthen their voice in the policy and design process. This solution is about democratic participation. The Bill does not provide for this. Principles of good law making have rich cultural, historical and jurisprudential roots. Any mechanisms that alter or touch on them need careful consideration and need to take account of our democratic ideals, international law (including human rights), and our existing constitutional framework.

The Bill is also silent on Te Tiriti o Waitangi. While its legal status is contested – there is no doubt Te Tiriti o Waitangi is part of our constitutional framework. This Bill attempts to obscure our obligations to uphold Te Tiriti by being entirely silent on it. In our view – this is

a deliberate tactic by ACT New Zealand to advance a view of Te Tiriti o Waitangi that has been resoundingly rejected by New Zealanders.

Recommendation:

We recommend this Bill is withdrawn. In the event Parliament wants to reintroduce a Bill of this nature, it must be prepared only with broad community and cross-parliament support.

In the event the Bill is to proceed, we recommend significant amendments are made. Those amendments should follow one of two paths:

- 1. Amend the Bill to ensure core democratic and human rights principles are clearly stated as dominant purposes PROVIDED such amendments are prepared with broad community and cross-parliament support. (i.e. effectively start again).**
- 2. Amend the Bill to significantly limit its jurisdiction so that it does not encroach on the rights and democratic issues we outline above. While its not immediately clear what such amendments would look like – some of the principles in the Bill would fit more comfortably if they were limited to commercial, procurement or taxation spheres. Having said that, rights issues exist within all aspects of society so its hard to see how a carve out can be safely done within importing undue**

¹ For example, American slavery and the rise of fascism occurred within democratic societies where

fundamental human rights are not sufficiently protected.

risk. Again, we recommend a careful, cross-party approach.

We have read the submission of Community Law Centres Aotearoa and

New Zealand Law Society. We support those submissions.

We would like to speak to our submission.

YouthLaw Aotearoa

Level 1, Westfield Shopping Centre
5 Leyton Way
Manukau City Centre
Auckland

0800 UTHLAW
(0800 884 529)

www.youthlaw.co.nz

