



Response to Abuse in Care Legislation
Amendment Bill

Submission from VOYCE – Whakarongo Mai



About VOYCE - Whakarongo Mai

We are VOYCE - Whakarongo Mai, which stands for Voice of the Young and Care Experienced - Listen to me. Established in 2017, we are an independent charity organisation that was co-designed by children with care experience for children with care experience. We help to advocate for the approximately 6000 tamariki and rangatahi in care in Aotearoa. We exist to amplify the voices of these tamariki and rangatahi and ensure that they are heard – so as to positively influence their individual care and to collectively affect change across the wider care system.

We are guided by our five pou in all that we do:

- **WHAKAMANA** (empowerment): We advocate alongside of and with care experienced tamariki and rangatahi, in relation to their goals and concerns
- **TŪHONO** (connection): We connect care experienced tamariki and rangatahi with each other through activities and local networks
- **WHAKATAIRANGA** (amplification): We promote the collective voice of care experienced tamariki and rangatahi so that they can influence the wider system
- **WHAIPŪKENGA** (skills development): We equip and enable care experienced tamariki and rangatahi for their future
- **RANGATIRATANGA** (leadership development): We build leadership among care experienced tamariki and rangatahi

Contributors to this submission

Whakarongo Mai – Listen to me

Due to the time constraints raised below we have used the previous engagement undertaken in the writing of our position paper on the Oranga Tamariki – Residence and Other Matters Bill to inform this Bill. Input and quotes from care experienced rangatahi are woven through our submission, including rangatahi from Te rōpū Kaitiaki mō ngā teina, e haere ake nei.

We tautoko the leadership of all who contributed in elevating the voices of young people in this mahi.

For more information

Please contact our Impact and Insights team at ImpactandInsightsTeam@voyce.org.nz

December 2024

Committee Secretariat
Social Services and Community Select Committee
Parliament Buildings
WELLINGTON
ssc@parliament.govt.nz

Tēnā koutou Members of the Social Services and Community Select Committee,

RE: Submission on the Responding to Abuse in Care Legislation Amendment Bill

Hei mihi

Tihei Mauri Ora,
Kia tau iho rā ngā manaakitanga o te wāhi ngaro ki runga i a tātou katoa

Mā te wairua o ngā matua tupuna e ārahi nei i ēnei kōrero kua whakaemiemi nei hei tirohanga mō koutou.

No reira, Whakarongo mai ki te tangi o te hunga atawhai
ka tangi wiwini, ka tangi wawana

Hikina tō rātou reo kia rewa ki runga kia tina,
Tina, haumi e, hui e, Taiki e.

Our general position

VOYCE – Whakarongo Mai welcomes much of what is announced in this Bill. We strongly support measures to keep tamariki safer: extending children’s worker safety checks to include overseas convictions, removing strip searches from residences, introducing universal scanning on entry to residences, and implementing search plans for young people in residence. We also welcome improvements to record keeping.

VOYCE – Whakarongo Mai is disappointed that the Bill does not go further to implement the recommendations from the Royal Commission of Inquiry into Abuse in Care.

VOYCE – Whakarongo Mai does not support the Bill’s introduction of the use of force when carrying out searches.

VOYCE – Whakarongo Mai wishes to appear before the Committee to make an oral submission.

Our key recommendations

Recommendation #1 Prioritise and fast-track the Government's response to the recommendations of the Royal Commission of Inquiry into Abuse in Care.

Recommendation #2 Amend the Bill so that section 2(a) reads 'remand of children or young people under this Act.'

Recommendation #3 Take stronger steps to ensure that the grouping of tamariki and rangatahi in Youth Justice residences is relevant to their age cohort, needs and status.

Recommendation #4 Oranga Tamariki fast track strategies that reduce the length of time young people are held in remand, improve the monitoring of this and have time on remand recognised as time served at sentencing.

Recommendation #5 More strongly regulate the use of 'secure care'

Recommendation #6 Ensure that the funding of scanners to replace pat-down and wand searches in residences is a priority.

Recommendation #7 Amend the legislation to include the requirement for training and regular checks on competency of kaimahi using the scanners.

Recommendation #8 Amend the legislation to provide an exception for head coverings worn for religious reasons.

Recommendation #9 Ensure all young people experiencing searches are supported to provide their own feedback for the search report.

Recommendation #10 Remove the proposed section 384KB from the Bill and mandate recording and public reporting of data regarding the use of force against children in residences.

Recommendation #11 Amend the Bill to provide additional provisions that ensure the sharing and maintaining of records meets the best practice requirements recommended by Whanaketia.

Ngā mihi,

VOYCE – Whakarongo Mai

On behalf of the Tamariki and Rangatahi represented by VOYCE – Whakarongo Mai

6 promises

Our VOYCE – Whakarongo Mai 6 Promises reflect basic expectations from care experienced tamariki and rangatahi. Oversight of Oranga Tamariki continues to fail to meet these promises to tamariki and rangatahi in state care in Aotearoa. We would like to highlight three promises in particular in relation to this Bill – promise 2 to be kept safe, promise 5 to be listened to and promise 6 to help us know who we are.

E kī taurangi ana au kia whakahōnore a Aotearoa i tōna haepapa, ā mātua nei, kia whakarato ki a koe

I promise to take care of you and make sure you have the things you need

E kī taurangi ana au kia noho mātāmua te pūmautanga i roto i tō oranga.

I promise to make sure you have safety and stability in your life

E kī taurangi ana au kia whakarato i te tautoko ki a koe e whai ai koe, e whai wāhi ai hoki koe ki ō whāinga me ō wawata mātauranga.

I promise to help you with your education goals and dreams

E kī taurangi ana au kia whai wāhi koe ki ngā ratonga hauora e tika ana mōu i te wā e tika ana.

I promise to support you with healthcare when you need it

E kī taurangi ana au kia mātua whai wāhi atu koe ki ngā whakatau e pā ana ki a koe kei noho ana koe ki ngā pūnaha tiaki.

I promise to listen and include you when decisions are made about you

E kī taurangi ana au kia whanake i tō tuakiri, kia mōhio ki tō whakapapa, kia whakatipu hoki i tō mana Motuhake

I promise to help you feel confident in who you are, and learn about your whakapapa, culture and language

These promises arise from our children’s basic human rights. Human rights that every tamaiti and rangatahi in Aotearoa should be able to enjoy, and which the State as a parent has an obligation to uphold for children in their care. These promises are enshrined in legislation via the Oranga Tamariki Act 1989 and Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018. And yet, monitoring of Oranga Tamariki continues to highlight that they are still falling woefully short of their own basic standards and are failing to keep the promises that have been made to our tamariki.

Our submission

This is a significant Bill that is taking steps to begin to address the recommendations from *Whanaketia – Through pain and trauma, from darkness to light*, the final report from the Royal Commission of Inquiry into Abuse and Care. However, this Bill does not go far enough. VOYCE – Whakarongo Mai are disappointed at the lack of progress the Government has made in implementing the recommendations from Whanaketia. The lack of redress continues to impact on inter-generational trauma and the magnitude of this trauma is evident. It should be the main priority for this government.

VOYCE - Whakarongo Mai would like to see a comprehensive implementation plan from Government that clearly shows how all the recommendations from the Royal Commission's Abuse in Care Inquiry will be implemented. Included in this VOYCE - Whakarongo Mai wants to see addressed the specific expectations of the current care experienced community, as highlighted in Korowai Aroha ¹.

Having a submission period that falls in the lead up to the holiday season and a time that, for young people, includes the pressures of exam time, end of school year and significant changes in routine, has been prohibitive in ensuring that those most impacted have a say.

The timing of this and so many other Bills has made it difficult for VOYCE – Whakarongo Mai to meaningfully engage with those most impacted and ensure that tamariki and rangatahi experienced in care have had time to review and reflect on this Bill. Consultation and engagement, particularly with those most impacted is paramount in ensuring legislation is fit for purpose. VOYCE – Whakarongo Mai would also like to make an oral submission, but are concerned about being prepared for the indicative dates provided.

The Regulatory Impact Statement (RIS)² for this Bill raised concerns about the lack of consultation and the swift process followed to deliver the Amendment Bill. Highlighting concern about the limited consultation it was able to take with Māori, noting that this was particularly concerning given tamariki and rangatahi Māori are disproportionately represented in the youth justice system. This is something that we have seen across a range of legislative change before select committee in recent months. Select Committee is how Government ensures public have a voice on issues that impact them. The current rapid-fire process has impacted negatively on people's ability to do this.

What we wanted to see more of

The interim report on redress *He Purapura Ora, he Māra Tipu from Redress to Puretumu Torowhānui* has been with the Government since 2021 and the redress design group's report for just under a year. The process for redress is still unclear and should be further on than it is. The lack

¹ Korowai Aroha <https://voyce.org.nz/korowai-aroha/>

² <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/Amendments-to-the-OT-act-1989/Regulatory-Impact-Statement-Search-powers-in-secure-Care-and-Protection-and-Youth-Justice-residences-.pdf>

of redress continues to impact on generational trauma, the magnitude of this trauma is evident. It should be the main priority for this government.

VOYCE - Whakarongo Mai does not believe this Bill goes far enough. With only 28 of the recommendations either completed or being worked on and no public detail on the work that is under way. There has not been enough done to implement the recommendations from the Royal Commission of Inquiry into Abuse in Care. VOYCE - Whakarongo Mai want to see more.

Recommendation #1 Prioritise and fast-track the Government’s response to the recommendations of the Royal Commission of Inquiry into Abuse in Care.

Extending the workforce restrictions – Keep us safe

VOYCE - Whakarongo Mai welcomes the extension of workforce restrictions for children’s workers to include convictions from overseas jurisdictions and include offences involving minors under the Prostitution Reform Act 2003.

Changes to the definition of Youth Justice residence

Clause 14 of the Bill widens the definition of a Youth Justice residence. In effect this broadens who can be put in a Youth Justice residence. VOYCE - Whakarongo Mai is particularly concerned by the new section 2(a) which appears to be a shift to include, as a Youth Justice residence, any residence that has a purpose of holding in remand, a **person** under this Act or **any other legislation** (emphasis ours). This change will increase the risk of age mixing in youth justice residents and widen the scope of what constitutes Youth Justice residences in relation to remand.

Both the recent Annual OPCAT report³ and the Independent Rapid Review of Secure Residences⁴ observed that age mixing is happening across residences and point to concerns with this under the current legislation. It was evident that age-mixing “fostered an environment where younger mokopuna are being negatively influenced by older cohorts”⁵. It was felt that there was “a need for separating the age groups to protect the younger more vulnerable group”⁶. This legislation, by broadening the definition to include any person, will only add to these negative experiences and outcomes when age-mixing occurs and increase the risks for young people in youth justice residences.

Recommendation #2 Amend the Bill so that section 2(a) reads ‘remand of children or young people under this Act.’

³ <https://www.manamokopuna.org.nz/publications/reports/opcat-annual-report-2022-2023/>

⁴ <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Reviews-and-Inquiries/Rapid-residence-review/Secure-residence-review.pdf>

⁵ <https://www.manamokopuna.org.nz/publications/reports/opcat-annual-report-2022-2023/>

⁶ <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Reviews-and-Inquiries/Rapid-residence-review/Secure-residence-review.pdf>

New Zealand currently has a reservation on article 37(c)⁷ of the UNCRC that requires children to be held separately from adults when on remand. The UN Committee on the Rights of the Child has urged the Government to withdraw this reservation. The Government has said that “New Zealand will withdraw these reservations when our legislation and policy match the requirements of these articles. In the meantime, the Government maintains a system of policy and legislative protections to prevent adverse outcomes for children in these situations.”⁸ This proposed change in definition raises concerns of increasing adverse outcomes, as well as taking New Zealand even further away from being in a position to withdraw its reservations on article 37(c) of the UNCRC.

Recommendation 75(b) of Whanaketia calls for a review of any policies or processes that place children and young people in care with others who may put them at risk, this amendment to the definition is in contradiction to this Royal Commission recommendation.

Recommendation #3 Take stronger steps to ensure that the grouping of tamariki and rangatahi in Youth Justice residences is relevant to their age cohort, needs and status.

As this Bill is considering the definition by which youth justice residences can be used for remand VOYCE – Whakarongo Mai would also like to see the legislation take steps to reduce the length of time young people are held on remand and ensure that time served on remand is taken into account at sentencing as time served.

Recommendation #4 Oranga Tamariki fast track strategies that reduce the length of time young people are held in remand, improve the monitoring of this and have time on remand recognised as time served at sentencing.

Time limits on detention in secure care - Last resort only.

As part of earlier feedback to Oranga Tamariki, young people who had experienced youth justice residences told us they had experienced being in secure care for 14 days. Young people also reflected that, even after an incident is de-escalated and there are no ongoing tensions, young people are still sent to secure as punishment. There needs to be stronger regulation and oversight of the use of secure care for this reason.

Concerningly the recent Annual OPCAT Report noted that “Due to staffing constraints and an increase in presentations of mokopuna with high and complex needs, there was a largely punitive approach engaged across Youth Justice residences which involved high use of searches and restrictive practices like restraint holds and secure care (seclusion). There were regular applications made to the Youth Court to keep mokopuna in secure care for longer stays.”⁹

⁷ Article 37(c) of the UNCRC requires that every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

⁸ <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/uncroc/nz-fifth-periodic-report-under-the-united-nations-convention-on-the-rights-of-the-child.pdf>

⁹ <https://www.manamokopuna.org.nz/publications/reports/opcat-annual-report-2022-2023/>

Recommendations 73 and 74 of Whanaketia¹⁰ call for the use of restrictive practices to be minimised and only used as a last resort. With adequate frameworks, safeguards and checks in place. With a call to eliminate the use of solitary confinement in all care settings.

While VOYCE - Whakarongo Mai acknowledges that the Bill is seeking to make the restrictions on 'secure care' clearer. Tamariki and rangatahi want to see it made clear that detention in 'secure care' should only ever be a last resort and that the use of 'secure care' needs to be more strongly regulated. VOYCE - Whakarongo Mai are disappointed this Bill is not taking stronger steps to address this.

Recommendation #5 More strongly regulate the use of 'secure care'.

Search changes – keep us safe and listen to us

VOYCE – Whakarongo Mai are in full support and welcome the removal of strip searches.

Introducing scanners

The Bill proposes new search powers on entry to Youth Justice residents. Moving from 'reasonable grounds' to a universal search on entry and the use of scanners rather than pat down searches and the removal of strip searches. Young people are in support of a change to whole body scanners "Young people are of the firm view that priority needs to be given to ensuring adequate technology, such as whole-body scanners similar to airports, is available and used in every residence to minimise the use of "hands on" searches such as pat downs."¹¹

Searching all entrants treats everyone the same. It is important that staff are treated the same way as young people and visitors. "Young people have experience of unauthorised items being 'sneaked' in by kaimahi and take issue with the belief that is only them or their whānau who present a risk of bringing contraband into a residence."¹² The change has the potential to ensure greater safety inside a residence.

While we welcome the change to body scanners there is concern that scanners are not currently in place in residents. The Regulatory Impact Statement for this Bill notes that "Oranga Tamariki does not currently possess this equipment in residences, and procurement would come at significant cost and logistical consideration."¹³ The RIS also notes that there is "significant uncertainty for the

¹⁰ <https://www.abuseincare.org.nz/reports/whanaketia/preliminaries/recommendations/>

¹¹ In March 2024 VOYCE – Whakarongo Mai facilitated input from young people who had experienced youth justice residences to provide input on the Oranga Tamariki Residences and Other Matters Bill, these quotes come from that engagement.

¹² In March 2024 VOYCE – Whakarongo Mai facilitated input from young people who had experienced youth justice residences to provide input on the Oranga Tamariki Residences and Other Matters Bill, these quotes come from that engagement.

¹³ <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/Amendments-to-the-OT-act-1989/Regulatory-Impact-Statement-Search-powers-in-secure-Care-and-Protection-and-Youth-Justice-residences-.pdf>

financial costing for implementing new search technology and that further implementation planning is needed.”

In March 2024 VOYCE – Whakarongo Mai facilitated input from young people who had experienced youth justice residences to provide input on the Oranga Tamariki Residences and Other Matters Bill. This included feedback on the Government’s early work exploring the use of scanners. At that time VOYCE – Whakarongo Mai stated that “This should be in place as a principled and rights-based decision rather than being seen as a cost issue and therefore a barrier to put in place. It was also felt that the use of metal detectors only is inadequate.”

Recommendation #6 Ensure that the funding of scanners to replace pat-down and wand searches in residences is a priority.

Protecting our rights when using scanners

Neurodivergent tamariki and rangatahi and anyone with a fear of confined spaces will need particular support to use full body scanning technology. Training and awareness of the issues that might present in these situations and how best to support people experiencing anxiety when being scanned need to be an essential part of training.

In earlier feedback provided by VOYCE – Whakarongo Mai¹⁴ the importance of training of kaimahi being part of the legislation was noted “Consideration also needs to be given to the training, competency and oversight of kaimahi who conduct searches with greater quality control and monitoring which is centered on the rights of young people for their mana and dignity to be upheld. This should be included in the legislation and kaimahi held to account for breaches of this.”

Recommendation #7 Amend the legislation to include the requirement for training and regular checks on competency of kaimahi using the scanners.

Clauses 19 and 28 of the Bill call for the removal of any head covering for the purposes of facilitating a scanner search. Scanners can see through clothing and would be able to see through head coverings. VOYCE – Whakarongo Mai would like to see an exception made for removal of head coverings when the head covering is worn for religious reasons. Article 2 of the UNCRC¹⁵ states that no child should experience discrimination whatever their ethnicity, sex, religion, language or abilities. Article 14 of the UNCRC and Section 15 of the New Zealand Bill of Rights Act 1990 both speak to the right to manifest your religious observance.

Recommendation #8 Amend the legislation to provide an exception for head coverings worn for religious reasons.

¹⁴ In March 2024 VOYCE – Whakarongo Mai facilitated input from young people who had experienced youth justice residences to provide input on the Oranga Tamariki Residences and Other Matters Bill, these quotes come from that engagement.

¹⁵ https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_PRESS200910web.pdf

The Regulatory Impact Statement¹⁶ identified that there needs to be safeguards built into the legislation around any images captured when using scanning technology. VOYCE – Whakarongo Mai welcome the protections in the legislation on images produced as a result of scanning (clauses 23 and 28 of the Bill).

Search plans

VOYCE – Whakarongo Mai welcomes the new requirements of the Bill to ensure that a search plan is developed for each tamariki or rangatahi to meet their needs and preferences for how they are searched and by whom. As noted in the Regulatory Impact Statement this will enable search plans and the undertaking of searches to take into consideration the preferred gender identity of tamariki and rangatahi, any trauma they have previously experienced, and any other matter that may negatively affect how they experience a search. Enhancing the rights and dignity of gender diverse and trauma experienced young people. When a young person is searched, they should be offered the opportunity to provide feedback in their own words with the support of an independent advocate. This should be recorded on the search report

Recommendation #9 Ensure all young people experiencing searches are supported to provide their own feedback for the search report.

Use of force

Clause 28 of the Bill introduces the ability to use force when carrying out a search in a Youth Justice resident. VOYCE – Whakarongo Mai does not support this. There are already sufficient measures in place. Force should always be a last resort, with isolation rather than restraint always being the preference. Furthermore, there is no recording of the use of force in residences, and no visibility of in what circumstances or how often it is being used. There is an opportunity here to mandate the recording and public reporting of data relating to the use of force.

Recommendation #10 Remove the proposed section 384KB from the Bill and mandate recording and public reporting of data regarding the use of force against children in residences.

Record keeping – help us know who we are

Care often separates children and young people from their whakapapa. There needs to be easy and clear pathways for children and young people to know where their information is stored and how they can access it should they ever want to. This Bill seeks to improve the creation and access to records and enables earlier audits of agencies for compliance of information management.

It is important to recognise that abuse in care is not just about physical abuse it is also about the trauma that is caused through disconnect from family, whānau and culture. Information about and

¹⁶ <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/Amendments-to-the-OT-act-1989/Regulatory-Impact-Statement-Search-powers-in-secure-Care-and-Protection-and-Youth-Justice-residences-.pdf>

records from a time in care are taonga and an important part of how tamariki and rangatahi stay connected to their whakapapa, culture and whānau while in care and after exiting care.

VOYCE – Whakarongo Mai would like the Bill to recognise the importance information and records have in ensuring tamariki and rangatahi know their story and can access it whenever they wish. To do this well there needs to be more work to ensure the way records are shared and maintained across agencies is meeting best practice as it has been recommended in Whanaketia (recommendations 81-84).¹⁷

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Recommendation #11 Amend the Bill to provide additional provisions that ensure the sharing and maintaining of records meets the best practice requirements recommended by Whanaketia.

Our key recommendations in summary

Recommendation #1 Prioritise and fast-track the Government’s response to the recommendations of the Royal Commission of Inquiry into Abuse in Care.

Recommendation #2 Amend the Bill so that section 2(a) reads ‘remand of children or young people under this Act.’

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Recommendation #9 Ensure all young people experiencing searches are supported to provide their own feedback for the search report.

¹⁷ <https://www.abuseincare.org.nz/reports/whanaketia/preliminaries/recommendations/>

Recommendation #10 Remove the proposed section 384KB from the Bill and mandate recording and public reporting of data regarding the use of force against children in residences.

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